

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia

OCTOBER TERM, 1931

No. 5573

JESSE ELLIS PORTER, APPELLANT,

vs.

MARY S. PORTER.

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA**

FILED DECEMBER 10, 1931.

PRINTED JANUARY 12, 1932.

Nov. 7/32

115

Approved
by

Court of Appeals of the District of Columbia

OCTOBER TERM, 1931

No. 5573

JESSE ELLIS PORTER, APPELLANT,

vs.

MARY S. PORTER, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

INDEX.

	Original	Print
Caption	<i>a</i>	1
Bill of complaint for absolute divorce.....	1	1
Motion to make bill more specific.....	5	5
Order overruling motion to make bill more specific.....	6	6
Order for alimony <i>pendente lite</i> , etc.....	7	6
Answer of Jesse Ellis Porter.....	7	7
Order for calendaring.....	12	10
Alias subpoena to answer.....	12	11
Note: marshal's return.....	13	11
Affidavit as to nonresidence of co-respondent.....	13	11
Order for appearance of absent defendant by publication....	14	12
Memorandum opinion.....	15	13
Interlocutory decree of divorce.....	15	13
Final decree of divorce.....	16	14
Appeal noted by Jesse E. Porter and penalty of bond fixed	17	15
Memoranda: \$50 deposit in lieu of bond on appeal: state- ment of evidence filed.....	18	15
Assignments of error.....	18	15
Order of Court of Appeals extending time to file transcript of record.....	19	16
Order of Court of Appeals further extending time to file transcript of record.....	20	16

	Original	Print
Memorandum: Statement of evidence signed by Justice		
Bailey and filed.....	21	17
Order of Court of Appeals further extending time to file		
transcript of record.....	21	17
Designation of record.....	22	18
Clerk's certificate.....	23	18
Statement of evidence.....	24	19
Testimony of Mary S. Porter.....	24	19
Perry Bonner.....	27	21
Richard J. Cox.....	32	26
Jesse E. Porter.....	33	27
Paul B. Elcan.....	37	31
Hallock P. Long.....	38	31
John R. East.....	38	31
Mrs. Eunice B. Mars.....	39	32
Annie N. Bohrer.....	39	32
Rollie M. Mosley.....	42	35
Exhibits	44	37

Court of Appeals of the District of Columbia

No. 5573.

JESSE ELLIS PORTER, Appellant,

vs.

MARY S. PORTER.

a Supreme Court of the District of Columbia.

Equity. No. 49609.

MARY S. PORTER, Plaintiff,

vs.

JESSE ELLIS PORTER, Defendant, and HELEN F. SUMMERS,
Correspondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint for Absolute Divorce.*

Filed March 28, 1929.

In the Supreme Court of the District of Columbia, Holding
an Equity Court.

Equity. No. 49609.

MARY S. PORTER, Plaintiff,

vs.

JESSE ELLIS PORTER, Defendant, and HELEN F. SUMMERS,
Correspondent.

The bill of complaint of Mary S. Porter respectfully shows to the Court as follows:

1. That she is an adult citizen of the United States and a resident of the District of Columbia, and has been such resident for more than three years prior to the institution of this suit, and files this bill in her own right and as the wife of the defendant.

2. That the defendant, Jesse Ellis Porter, is likewise an adult citizen of the United States and a resident of the District of Columbia, and is sued herein in his own right and as the husband of the plaintiff; that the co-respondent, Helen F. Summers, is, so plaintiff is informed and believes and accordingly avers, also an adult citizen of the United States and a resident of the District of Columbia, and is sued herein in her own right.

3. That heretofore, to-wit, September 21, 1927, plaintiff and defendant were lawfully married, and no children have been born of said union.

4. That following the marriage of plaintiff and defendant, they lived and cohabited as man and wife in the District of Columbia at various places therein, and said District has at all times been the marital domicile of the parties hereto.

2 5. That although plaintiff has at all times demeaned and conducted herself as an affectionate and dutiful wife, yet the defendant, Jesse Ellis Porter, did, notwithstanding the same, for a long period of time, pursue a systematic course of cruelty and abusive treatment against the plaintiff, said treatment and defendant's conduct culminating ultimately in the withdrawal of the plaintiff from the marital abode of plaintiff and defendant on, to-wit, the 19th day of March, A. D., 1929, since which time the parties hereto have not cohabited as man and wife.

6. Plaintiff avers the fact to be that shortly after the marriage of the parties hereto, the defendant grew tired of the plaintiff, manifesting his complete indifference to her welfare by refusing to accord to the plaintiff the attention and consideration due an affectionate and dutiful wife. That for a long period of time defendant would refrain from carrying on ordinary conversation with the plaintiff and without any reasonable excuse or justification would refuse to speak to the plaintiff or to engage in any conversation with her for long periods of time, to the great mental anguish of the plaintiff. Plaintiff avers that the defendant for sometime prior to the separation of the parties hereto

was in the habit of spending all of his time away from his home except that period devoted to sleep, would refuse to take the plaintiff to places of amusement or entertainment, would refuse to associate with her at meal time, and spent practically all of his time either in the company of his mother or with the co-respondent named herein. That he was and is the possessor of an automobile which he uses for his own entertainment and for the entertainment of his mother and for the co-respondent named herein. Plaintiff avers that for a period of six months the defendant remained away from his home every night until late hours of the evening or early hours of the morning, refusing
3 and failing to explain his absence or the cause thereof, to the great mental anguish of the plaintiff.

7. Plaintiff avers that the defendant further pursued toward the plaintiff a systematic course of cruelty and abusive treatment in that he refused to supply her with proper funds with which to purchase the necessities and little luxuries of life; that he refused to treat the plaintiff as a wife in connection with the management of their marital and home affairs, and devoted himself exclusively to the entertainment of his mother and the co-respondent named herein.

8. Upon information and belief, plaintiff avers the fact to be that the defendant, Jesse Ellis Porter, and the co-respondent, Helen F. Summers, committed the act and offense of adultery with each other on, to-wit, January 12th and 26th, 1929, at premises 101 U Street, Northwest, Washington, District of Columbia.

9. Upon information and belief, plaintiff avers the fact to be that the defendant, Jesse Ellis Porter, and the co-respondent, Helen F. Summers, committed the act and offense of adultery with each other on, to-wit, February 9th, 16th and 23rd, 1929, at premises 101 U Street, Northwest, Washington, District of Columbia.

10. Upon information and belief, plaintiff avers the fact to be that the defendant, Jesse Ellis Porter, and the co-respondent, Helen F. Summers, committed the act and offense of adultery with each other on, to-wit, March 2 and 9th, 1929, at premises 101 U Street, Northwest, Washington, District of Columbia.

11. Plaintiff avers the fact to be that the defendant, Jesse Ellis Porter, and the co-respondent, Helen F. Summers,

committed divers and sundry other acts of adultery with each other between January 1st, 1929, and March, 9th, 1929, at premises 101 U Street, Northwest, Washington, District of Columbia, and at other places which are at this time unknown to plaintiff, although she has used due diligence to ascertain the same.

12. That all the foregoing acts of adultery were committed by the defendant, Jesse Ellis Porter, and the co-respondent, Helen F. Summers, without the consent, connivance, privity or procurement of the plaintiff, and since learning of the same she has not cohabited with defendant voluntarily or otherwise.

13. That the plaintiff for a long period of time has been under the treatment of a physician, and is without means of support, and due to her said condition is unable at the present time to pursue a gainful occupation; that the defendant is employed in the Ordnance Bureau of the War Department, Munitions Building, at an annual salary of \$2300.00; that he also receives \$150.00 each year as a First Lieutenant in the Officers' Reserve Corps.

Wherefore, the premises considered, plaintiff prays as follows:

1. That the United States Writ of Subpœna issue out of this Court directed to the defendant, Jesse Ellis Porter, and the co-respondent, Helen F. Summers, commanding them and each of them to appear herein on a day certain and answer the exigencies of this bill.

2. That all necessary rules and motions may from time to time issue.

3. That pending the outcome of this cause, plaintiff be awarded a reasonable sum as alimony *pendente lite*, counsel fees and costs of this suit.

4. That upon a final hearing hereof, plaintiff be awarded a divorce *a vinculo matrimonii*, permanent alimony, counsel fees and costs.

5. And for such other and further relief as the nature of the case may require and to the Court may seem meet and proper.

MARY S. PORTER,
Plaintiff.

RAYMOND NEUDECKER,
WILLIAM C. ASHFORD,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, ss:

Mary S. Porter, being first duly sworn, according to law, deposes and says; that she has read the foregoing bill by her subscribed and knows the contents thereof; that the matters and things therein contained as of her personal knowledge are true, and those based upon information and belief, she believes to be true.

MARY S. PORTER,
Plaintiff.

Subscribed and sworn to before me this 26th day of March, A. D. 1929.

JOSIE A. GORMAN, [SEAL.]
Notary Public, D. C.

Motion to Make Bill More Specific.

Filed April 3, 1929.

* * * * *

Now comes the defendant, Jesse E. Porter, by his attorneys, and moves the Court that the plaintiff be required to make the Bill of Complaint more specific, so that the person described as "Helen F. Summers, co-respondent" may be identified, or that the bill shall disclose if she is a person unknown or the name fictitious.

H. P. LONG,
J. NELSON ANDERSON,
Attorneys for the Defendant, Jesse E. Porter.

6 Messrs. Neudecker and Ashford, Esquires,
Attorneys for the Plaintiff,
Washington, D. C.

GENTLEMEN :

Please take notice that the above motion has been calendared for hearing in Equity Court No. 1, for Friday, April 5, 1929, at 10 A. M., or as soon thereafter as counsel can be heard.

H. P. LONG,
J. NELSON ANDERSON,
Attorneys for the Defendant, Jesse E. Porter.

Order Overruling Motion to Make Bill More Specific.

Filed April 15, 1929.

* * * * *

This matter came on at this term to be heard on the motion of the defendant, Jesse E. Porter, for an order requiring plaintiff to make the bill of complaint filed herein more specific, and was argued by counsel; in consideration whereof, it is, by the Court, this 15th day of April, A. D. 1929,

Adjudged and ordered that the said motion be, and the same is hereby, overruled.

By the Court:

JENNINGS BAILEY,
Justice.

O. K. as to form.

H. P. LONG,
Atty. for Deft.

7 *Order for Alimony Pendente Lite, etc.*

Filed April 15, 1929.

* * * * *

This matter came on to be heard at this term, upon the motion of the plaintiff, Mary S. Porter, for alimony *pendente lite*, the affidavit of the defendant in opposition thereto, and was argued by counsel; in consideration whereof, it is, by the Court, this 15th day of April, A. D. 1929,

Adjudged and ordered that the defendant, Jesse E. Porter, pay to the plaintiff, Mary S. Porter, through her counsel of record alimony *pendente lite* at the rate of Fifty (\$50.00) Dollars per month, payable in equal semi-monthly instalments on the first and fifteenth days of each and every month, the first payment hereunder being due and payable as of April 15, 1929.

By the Court:

JENNINGS BAILEY,
Justice.

O. K. as to form.

H. P. LONG,
Atty. for Deft.

Answer of Jesse Ellis Porter.

Filed April 18, 1929.

* * * * *

1. Answering paragraph 1 this defendant admits the allegations therein contained.

2. Answering paragraph 2 this defendant says that he admits that he is a citizen of the United States but in that he owns a small piece of property and spends a part of his time in Anne Arundel County, Maryland, he is not certain as to his residence, and therefore neither admits nor denies the same. As to one Helen F. Summers named in this cause

as co-respondent this defendant says that he never
8 heard of such a person, and therefore can neither admit nor deny her citizenship and residence, but if the same be material calls for strict proof thereof.

3. Answering paragraph 3 this defendant admits the allegations therein contained.

4. Answering paragraph 4 this defendant admits the allegations therein contained except as to the marital domicile which is subject to the qualifications as set out in paragraph 2 hereof.

5. Answering paragraph 5 this defendant says that he denies that plaintiff has conducted herself as an affectionate and dutiful wife, but says on the contrary she has not been affectionate nor companionable, but cold and unappreciative of this defendant's efforts to make her happy. This defendant positively denies that he pursued a systematic course of cruelty and abusive treatment against plaintiff but says that he never treated the plaintiff cruelly in any manner whatsoever but always provided for her as best he could and tried in every possible way to make the plaintiff happy and contented in so far as she would permit him so to do. This defendant admits that plaintiff voluntarily and without cause abandoned their home on or about the 19th day of March 1929 and without the knowledge or consent of this defendant. In fact, the defendant left as usual in the morning for his place of employment and upon his return in the afternoon found the apartment entirely vacated, the plaintiff having moved out during the day, taking with her the furniture and furnishings and some of the personal property of this defendant.

6. Answering paragraph 6 this defendant says that the fact is that the plaintiff seemed to grow tired of him and seemed very shortly after their marriage to manifest indifference toward him and his mother with whom they
9 were living at that time and seemed not to be interested in the home or the surroundings, which, however, were of her own choosing. It is true that plaintiff and defendant were not very conversant with each other for some time before plaintiff deserted this defendant, but this defendant says the fault was with plaintiff. This defendant says that he did spend considerable time at the home of his mother where he had lived up to the time of his marriage and where he had space and had provided himself with working tools and materials as a draftsman, and where he did some extra work when out of office, and in attending communications of his lodges, but that it was because the plaintiff was not companionable and because he felt that his association with the plaintiff was not to her liking. He denies, however, that he stayed out until late hours in the night or early morning hours, but says the fact to be that he nearly always returned around 11 o'clock and sometimes much earlier, which seemed, however, to be agreeable to the plaintiff. This defendant says that the plaintiff was away from the home with her own associates nearly every day and all day and at times had not even returned when he had returned to his home from his office.

While the D. C. tag on the automobile mentioned in this paragraph was secured in the name of this defendant, the fact is the automobile belongs to his mother and that he never went riding with defendant Helen F. Summers as alleged because he does not know of such a person, but that he would frequently go driving with his mother.

7. Answering paragraph 7 this defendant denies that he pursued a systematic course of cruelty and abusive treatment toward plaintiff or that he refused to supply her with funds with which to purchase necessities or even luxuries but says the fact is that he did furnish her with all the
10 necessities and luxuries of life in so far as his income would permit. This defendant denies that he refused to treat plaintiff as his wife in connection with the management of their home affairs, but states the fact to be that she showed a decided disposition of coldness and disinterestedness toward this defendant and displayed

an attitude of discontent and preferred the association of her own associates rather than that of this defendant and his kin and associates.

8. Answering paragraph 8 this defendant positively and unqualifiedly denies the statement therein concerning adultery with Helen F. Summers on January 12th and 26th, 1929 at 101 You Street, Northwest, Washington, D. C., or with any other person, at any other time, at any other place.

9. Answering paragraph 9 this defendant positively and unqualifiedly denies that he committed adultery with Helen F. Summers on February 9, 16, 23, 1929, at 101 You Street, Northwest, Washington, D. C., or with any other person, at any other time, at any other place whatsoever.

10. Answering paragraph 10 this defendant denies that he committed adultery on March 2 and 9, 1929 at 101 You Street, Northwest, Washington, D. C., or with any other person, at any other time, at any other place whatsoever.

11. Answering paragraph 11 this defendant positively and unqualifiedly denies that he committed adultery with Helen F. Summers between January 1st, 1929 and March 9, 1929 at 101 You Street, Northwest, Washington, D. C., or at any other time or at any other place, or that he even knows any such person.

12. Answering paragraph 12 this defendant repeats that he does not know such a person as Helen F. Summers and never committed adultery with her or anyone else, and further states that the allegations in paragraphs 8, 9, 10, and 11 of this bill are without foundation in fact, and he believes that the plaintiff perfectly well knows that they are false and untrue and they are brought against him by this plaintiff for the sole purpose of humiliation and discredit, and the premises mentioned in the bill of complaint, 101 You Street, Northwest, is the home of his mother where plaintiff and this defendant lived for three months after their marriage, and that these charges of adultery at that place are brought by this plaintiff for the purpose also of humiliating and discrediting and annoying his mother, who did all she could to make the plaintiff and this defendant happy and contented.

13. Answering paragraph 13 this defendant says that plaintiff is a trained nurse and was working as such before their marriage and he is advised and believes that she has

been working as such since she abandoned and deserted this defendant.

This defendant admits that he is employed in the War Department with an annual salary of \$2,300 and that from this salary in the War Department is deducted \$80.60 for retirement fund. That he has no income as an officer of the Reserve Corps but is paid a per diem when he is called in service but that has never amounted to more than \$77.70.

Further answering this defendant says that when plaintiff deserted him she took with her his personal possessions, and now has a number of gifts that came to them at the time of their marriage through his friends, which he desires returned to him.

Having fully answered the bill of complaint filed herein against him this defendant prays that he may be dismissed with his reasonable costs.

JESSE E. PORTER,
Defendant Porter.

12 I, Jesse Ellis Porter, a defendant in the above entitled cause, have read the foregoing answer subscribed by me, and know the contents thereof. The matters and things therein stated upon personal knowledge are true, and those stated upon information and belief, I believe to be true.

JESSE E. PORTER,
Defendant Porter.

Subscribed and sworn to before me this 18th day of April, 1929.

FRANK E. CUNNINGHAM,
Clerk.

By ANDREW A. HORNER,
Ass't Clerk.

H. P. LONG,
Attorney for Defendant Porter.

Order for Calendaring.

Filed June 4, 1929.

* * * * *

The Clerk of said Court will please calendar this cause for trial at the next term of this Court.

H. P. LONG,
EDWIN C. DUTTON,
Attorneys for Defendant, Jesse E. Porter.

Alias Spa. to Answer.

Issued March 4, 1930.

* * * * *

The President of the United States to Helen F. Summers,
Defendant, Greeting:

You are hereby commanded as heretofore you have been
commanded to appear before the Supreme Court of the
District of Columbia to answer a bill of complaint
13 (or petition) exhibited against you in the said Court
in a suit in Equity by the above-named plaintiff, and
to further do and receive what the said Court shall have
considered in this behalf; and hereof fail not.

Witness the Honorable Wendell P. Stafford, Senior Jus-
tice of said Court, the 4th day of March, A. D. 1930.

FRANK E. CUNNINGHAM,

Clerk,

By HARRY M. HULL,

Assistant Clerk.

NOTE.—The defendant is required to file his answer or
other defense in the Clerk's office on or before the twentieth
day after service, excluding the day thereof; otherwise, the
bill may be taken pro confesso.

Marshal's Return.

Within named Defendant Helen F. Summers not to be
found.

3/27/30.

EDGAR C. SNYDER,

*U. S. Marshal in and for
the Dist. of Columbia,*

By WM. J. KIRKLAND,

*Deputy U. S. Marshal.**Affidavit as to Non-residence of Co-respondent.*

Filed April 9, 1930.

* * * * *

Mary S. Porter, being first duly sworn, according to law
deposes and says that she is the plaintiff in the above cause

and executes this affidavit in support of the motion of her counsel for an order of publication herein. That the U. S. Marshal has made return of an original and alias subpoena in the above cause, addressed to the co-respondent, Helen F. Summers, "Not Found", with the additional notation on the alias subpoena that said co-respondent has removed from the last known local address of said co-respondent;

that she is advised that the said co-respondent on
14 March 9, 1929 occupied a room in an apartment house on R Street at 15th Street, Northwest, removing therefrom on, to-wit, March 10, 1929, after being confronted by agents of the plaintiff; that subsequently plaintiff was advised the co-respondent had moved to 1728 Connecticut Avenue, Northwest, where an attempt was made to serve process upon her. Plaintiff is now advised and avers, that said co-respondent left premises 1728 Connecticut Avenue, Northwest on, to-wit, October 5, 1929, although plaintiff was not so advised until after her counsel had issued an alias subpoena against the said co-respondent at that address, believing, as plaintiff was advised and so believed, that said co-respondent was living at the above mentioned address. That plaintiff is advised said co-respondent left the District of Columbia on, to-wit, October 5, 1929, and has not returned since. That her whereabouts are not known and the last known local address of said co-respondent was 1728 Connecticut Avenue, Northwest.

MARY S. PORTER,

Plaintiff.

Subscribed and sworn to before me this 8th day of April, A. D. 1930.

[SEAL.]

MILTON CONN,
Notary Public, D. C.

Order for Appearance of Absent Defendant by Publication.

Filed April 9, 1930.

* * * * *

The object of this suit is to obtain for the plaintiff an absolute divorce from the defendant, Jesse Ellis Porter, on the ground of adultery with the co-respondent, Helen F. Summers, and for general relief.

On motion of the plaintiff, it is this 9th day of April A. D. 1930, ordered that the defendant, Helen F. Summers, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default: Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter, and the Evening Star before said day.

By the Court:

WILLIAM HITZ,
Justice.

Memorandum Opinion.

Filed February 7, 1931.

* * * * *

I find that the evidence establishes a case for the dissolution of the marriage in favor of the plaintiff.

BAILEY, J.

Interlocutory Decree of Divorce.

Filed February 16, 1931.

* * * * *

This cause came on to be heard at this term of Court upon the bill of complaint filed herein by the plaintiff, the answer thereto of the defendant, Jesse Ellis Porter, proof of substituted service of process herein on the co-respondent, and the testimony adduced in open Court; in consideration whereof, it is, by the Court, this 16th day of February, A. D., 1931,

Adjudged, ordered, and decreed, as follows:

1. That the plaintiff, Mary S. Porter, has duly proved a case entitling her to a decree of absolute divorce from the defendant, Jesse Ellis Porter, on the ground of adultery committed with the co-respondent, Helen F. Summers, which fact the Court finds from the evidence, but no decree of divorce is awarded by this order.

2. That the defendant, Jesse Ellis Porter, pay to S. McComas Hawken and Raymond Neudecker, counsel of rec-

ord for the plaintiff, the sum of \$200.00 as and for a fee for services rendered to the plaintiff herein. That the order for alimony pendente lite entered herein April 15th, 1929 be and the same is hereby continued in full force and effect until otherwise ordered by the Court.

By the Court:

JENNINGS BAILEY,
Justice.

Final Decree of Divorce.

Filed June 3, 1931.

* * * * *

This cause coming on to be further heard upon the application of plaintiff, Mary S. Porter, by counsel in open Court, for a final decree herein, and it appearing to the Court that an interlocutory decree was entered herein the 16th day of February, 1931, adjudging that a case for the dissolution of the marriage had been proved because of adultery found to have been committed by the defendant, Jesse Ellis Porter, with the co-respondent, Helen F. Summers, as alleged in the bill of complaint, and it further appearing that ninety days have elapsed since the entry of the aforesaid interlocutory decree, and no cause to the contrary being shown, it is, by the Court, this 3rd day of June, 1931.

Adjudged, ordered, and decreed as follows:

1. That the bonds of matrimony heretofore existing between the plaintiff, Mary S. Porter, and the defendant, Jesse Ellis Porter, be and the same hereby are dissolved, and the plaintiff is granted a decree of divorce *a vinculo matrimonii* from the said defendant, Jesse Ellis Porter; provided, however, that this decree shall not be effective to dissolve the marriage until the expiration of the time allowed for taking an appeal or until the final determination of any appeal so taken.

2. That the defendant, Jesse Ellis Porter, be and he hereby is ordered and directed to pay to the plaintiff, through her counsel of record, permanent alimony in the sum of \$50.00 per month, payable in equal semi-monthly instalments on the first and fifteenth days of each and every month, the first payment hereunder being due and payable as of June 15th, 1931.

3. That the defendant, Jesse Ellis Porter, as directed by the interlocutory decree entered herein February 16th, 1931, pay to S. McComas Hawken and Raymond Neudecker, counsel of record for the plaintiff, the sum of \$200.00 as and for a fee for services rendered to the plaintiff herein, less such sums as said defendant may have paid towards said fee heretofore ordered to be paid.

4. That the costs of this proceeding, to be taxed by the Clerk, shall be paid by the defendant, Jesse Ellis Porter, and for said costs execution herein shall issue as at law.

JENNINGS BAILEY,

Justice.

From the foregoing decree, the defendant, Jesse E. Porter, by his attorney in open Court notes an appeal to the Court of Appeals, and the Cost Undertaking is fixed at \$100.00 with leave to deposit \$50.00 in lieu therefor.

JENNINGS BAILEY,

Justice.

18

Memoranda.

June 22, 1931.—\$50 deposit in lieu of bond on appeal.

July 11, 1931.—Statement of Evidence filed.

Assignments of Error.

Filed August 7, 1931.

* * * * *

1. The court erred in not dismissing plaintiff's bill for want of evidence to support it.

2. The court erred in denying motion of April 3rd, 1929 to make bill more specific.

3. The court erred in finding that the evidence in this cause was sufficient upon which to predicate a decree for absolute divorce.

4. The court erred in making the interlocutory decree of February 16th, 1931.

5. The court erred in making a final decree for absolute divorce of June 3rd, 1931.

EDWIN C. DUTTON,

HALLOCK P. LONG,

Attorneys for the Defendant.

Order Extending Time.

Filed October 12, 1931.

Court of Appeals of the District of Columbia, October
Term, 1931.

No. 1845, Original. Equity. No. 49609.

JESSE E. PORTER, Petitioner,

v.

MARY S. PORTER.

On consideration of the petition for an extension of time to and including November 16, 1931, within which to file the transcript of record in the above entitled cause in this Court.

It is ordered by the Court that said petition be and the same is hereby granted and the time extended as prayed.

Per MR. CHIEF JUSTICE MARTIN,

October 10, 1931.

A true copy. Test:

[SEAL.]

HENRY W. HODGES,

Clerk of the Court of Appeals
of the District of Columbia,

By MONCURE BURKE,

Deputy Clerk.

Order Further Extending Time to File Record.

Filed November 16, 1931.

Court of Appeals of the District of Columbia, October
Term, 1931.

No. 1845, Original. Equity. No. 49609.

JESSE E. PORTER, Petitioner,

v.

MARY S. PORTER.

On consideration of the petition for a further extension of time to and including the 30th day of November, 1931,

within which to file the transcript of record in the above entitled cause in this Court,

It is by the Court this day ordered that said petition be and the same is hereby granted and the time extended as prayed.

[SEAL.] Per MR. CHIEF JUSTICE MARTIN,
November 14, 1931.

A true copy. Test:

HENRY W. HODGES,
Clerk Court of Appeals, D. C.

21

Memorandum.

December 3, 1931.—Statement of Evidence signed by Justice Bailey and filed.

Order Further Extending Time to File Record.

Filed December 4, 1931.

Court of Appeals of the District of Columbia, October Term, 1931.

No. 1845, Original. Equity. No. 49609.

JESSE E. PORTER, Petitioner,

v.

MARY S. PORTER.

On consideration of the petition for a further extension of time to and including December 12, 1931, within which to file the transcript of record in the above entitled cause in this Court,

It is by the Court this day ordered that said petition be and the same is hereby granted and the time extended as prayed.

Per MR. CHIEF JUSTICE MARTIN,
December 3, 1931.

A true copy. Test:

HENRY W. HODGES,
Clerk Court of Appeals, D. C.

Designation of Record.

Filed July 7, 1931.

* * * * *

Now comes Jesse E. Porter, the appellant in the above-entitled cause and designates the parts of the record which he desires to have included in the transcript, such parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. Petition of plaintiff for absolute divorce,
2. Motion of defendant No. 1 to make bill more specific,
3. Order denying motion and allowing alimony pendente lite,
4. Answer of defendant No. 1,
5. Præcipe calendaring cause for trial,
6. Alias summons and return for defendant No. 2,
7. Affidavit of plaintiff in re residence of defendant No. 2,
8. Order of publication vs. defendant No. 2,
9. Interlocutory decree for absolute divorce,
10. Final decree for absolute divorce,
11. Assignment of errors,
12. This designation.

EDWIN C. DUTTON,
L.,
HALLOCK P. LONG,
Attys. for the Appellant.

Copies served this 7th day of July 1931.

RAYMOND NEUDECKER,
Atty. for the Appellee.
K. N.

23 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 22, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this

transcript, in cause No. 49609 in Equity, wherein Mary S. Porter is Plaintiff and Jesse Ellis Porter is Defendant, and Helen F. Summers, is Co-Respondent, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 8th day of December, 1931.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

24 Filed Dec. 3, 1931.

In the Supreme Court of the District of Columbia, Holding
an Equity Court.

Equity. No. 49609.

MARY S. PORTER (3118 18th St. N. E.), Plaintiff,

vs.

JESSE ELLIS PORTER, Defendant, and HELEN F. SUMMERS,
Co-respondent

Statement of Evidence.

The above entitled cause came on for hearing before Mr. Justice Bailey in Equity Court No. 1 on February 3, 1931. Attorneys S. McComas Hawken and Raymond Neudecker appeared on behalf of the plaintiff, and attorneys Edwin C. Dutton and Hallock P. Long appeared on behalf of the defendant, Jesse Ellis Porter. Thereupon the following proceedings were had and testimony given:

Mary S. Porter, being sworn, testified that she is the plaintiff in this cause and that Jesse Ellis Porter is the defendant, her husband. That she was married to the defendant September 21st, 1927 by the Rev. F. E. Rose, at the Petworth M. E. Church. Upon their marriage they went to live with the mother of the defendant and started to keep house at No. 101 U Street, N. W. They lived there from October 1st to December 14th, 1927, when plaintiff went to Garfield Hospital because, as she testified, she was worn out from worry and neglect. She remained there

until December 23rd, 1927, then going to her mother's home. Asked why she went to her mother's home when she left the hospital, she replied that the defendant's mother told her when she went to the hospital that
25 she was leaving the house never to enter it again.

A short time after their marriage defendant became indifferent to her, their marital relations continuing until the first part of December, 1927. Asked why, she replied that the defendant had told her they must not take any chances. They remained at her mother's until January 23rd, 1928 when the defendant got an apartment at 2535 13th St. N. W., the plaintiff asking him to do so. They lived at this address until October 1, 1928 and from this place they went to live at 2316 F St., N. W., where they lived together until March 19, 1929, at which time the plaintiff left the apartment. On this date she received a report from the detective about the conduct of her husband, as the detective had observed things, and as the result of information imparted to her by him, she left the apartment. That her husband did not thereafter contribute to her support, and that he is employed in the War Department at an annual salary of \$2100.00.

That on two or three occasions the defendant took her out during the evening to entertainments, and when she asked him why he treated her this way he replied, "You don't mean anything to me any more." Mr. Porter was always away in the summer time from Friday noon until about Sunday midnight. He went to his summer place with his mother, but never took the witness, nor did he give her any money to go any place.

Mr. Porter frequently remained away from home at night and would not tell witness where he had been. In August of 1928 witness asked him, "How much longer are you going to continue to treat me this way?", to which he replied: "Just as long as you continue to hang on to me."

Witness stated that Mr. Porter claimed he took her to the hospital because the doctor said she needed hypodermic injections and his mother was unable to give them. Witness testified that she did all of the housework, including the washing and ironing, and was compelled to stay in while defendant and his mother went out places.

26 Witness was shown certain blueprints which she identified as the house at 101 U St., N. W. Mr. Porter

stayed out January 19th, and January 20th, 1929, all night and did not come in until noontime of January 21st, when his mother brought him by the house. She sat in the car parked on 24th St. between E and F. Just before witness left the apartment for good, the defendant asked her if she had a detective following him. Witness had her suspicions aroused when, in the latter part of January or the first part of February, 1929, she found a tin box containing one rubber contraceptive in it in the pocket of any army coat. In relations with defendant they had used such articles, but the last time had occurred in December, 1927, and defendant usually kept the contraceptives in a bureau drawer which was locked, and each time it was necessary to use one, he would have to unlock the drawer. The defendant had followed witness to Sibley Hospital one morning; this was in August of 1928 when she was at the hospital from 9 A. M. to 4 P. M. with a cousin of defendant's who had had his tonsils removed. She did not receive any payment therefor. When the defendant asked her about it, she admitted it. Witness did not tell any untruths to the defendant about her nursing on the side. She told him she was staying with his aunt in the daytime. She would go up there a little after nine and stay until about three O'clock doing little things for his aunt and sometimes in the evening from seven to ten o'clock, because she was alone every evening. However, defendant objected so strenuously to this that she had to stop it altogether. However, in July, when he was at camp, she worked five nights in Garfield Hospital, when she was paid \$35.00. She needed clothes and did not have the money to buy them, as she had spent her money which she had earned before being married, buying furniture. When the parties
27 were living in the apartment on F St., the defendant was in the habit of returning home to his mother's in the evening from work and would afterwards come by the apartment. He would have dinner with his mother ordinarily.

Thereupon **Perry Bonner**, being first duly sworn, testified as follows: He is a private detective by occupation and has been such for nineteen years. In October, 1928, he was employed by Mrs. Mary S. Porter to observe the conduct of her husband. On several occasions in November and in December 1928, about five or six altogether, he had fol-

lowed the defendant from his mother's home at 101 U St., N. W., having had that address pointed out to him, and having had the defendant identified to him. He saw the defendant at this address practically every evening about dinner time, on the occasions when he was watching him. During this period, witness would observe the defendant drive from his home up T Street to 14th St., south on 14th St. to R, and would meet a girl on R St., right off 14th St., by the side of the North telephone exchange. Sometimes the girl would be there when the defendant would draw up in the car, and other times he would have to wait for her, and when he could not pull into the curb, he would park double. On each occasion when he would have to wait for the girl, she would come east on R St. from the direction of 15th St. On some of these occasions they would spend some time riding around, and invariably he would let the girl off at the place where he met her. There were one or two occasions when he would see Porter leave his mother's home at 101 U St., N. W. shortly after dinner time, but would not follow him further. Sometimes he would see the defendant leave his mother's home in company with his mother, or at least a lady who was pointed out to him as such. At this time he was driving a Nash touring car which looked then to be about four or
28 five years old.

On January 12th, 1929, witness saw Porter drive with his mother to the New Masonic Temple at 14th St., and New York Ave., N. W. This was between seven and eight o'clock. Porter went into the temple and stayed there for a while, but finally came out and drove to 14th & R Sts., N. W., and parked in an alley near this street intersection. It was about nine o'clock when he came out of the Masonic Hall. After his car was parked the same woman whom he had previously met joined him and they drove together to 101 U St., N. W., where they went in and left a dim light burning in the hall. There was no other light in the house according to the witness. They stayed in the house for less than an hour, when they came out together and got in the automobile and drove back to 14th and R Streets, where the woman who had joined him got out, and then he went back to the Masonic Temple. On this occasion when they reached the house, the girl followed him in after he had been in the house a few minutes. After he

reached Masonic Temple he came out shortly with a woman who looked to be his mother, and they drove away. January 12th, the date about which witness just testified, was a Saturday night.

On January 25th, 1929, which was a Friday night, witness saw the defendant Porter leave premises 101 U St., N. W. about seven o'clock. Witness was parked some distance away and could not tell who was in the car with him when he left, but someone was occupying the seat with him, and he drove in the direction of the Masonic Temple, 14th St. and New York Ave., N. W. Witness followed some distance behind, believing he was going to this address. Porter got to this address about a quarter to eight, letting some lady out of the car, whom witness could not identify from the distance, and then Porter drove up 14th Street to R Street, where he picked up the same girl whom he had met on the previous Saturday night, and rode over to 101 U St., N. W., where they entered, the same way as before. They came out of the house about nine o'clock. While they were in the house there was no light burning except the dim light in the hall. They came out walking slowly and got in a Chevrolet Coach which defendant was driving on this occasion, and drove to the vicinity of 14th and R Streets, N. W., where the girl left him. Porter then drove down 14th Street to the new Masonic Temple, parked his car a short distance away and entered the temple.

On the following night, January 26th, 1929, witness saw the defendant Porter and his mother leave premises 101 U St., N. W. and drive in the direction of new Masonic Temple, but did not stop there, going instead to the Blue Triangle Hut, near the Navy Department building. When witness saw them enter this building, he discontinued his observation for the evening. According to witness's recollection, Porter and his mother reached the Blue Triangle Hut about seven o'clock in the evening.

On February 8th, 1929, witness observed Porter driving a Chevrolet car from 101 U St., N. W. to 1436 R St., N. W., where the same woman who had previously met him joined him again and they drove leisurely back to 101 U St., N. W., where they entered. There was a small light burning in the hall, but a short while after they went in, a light was made upstairs. Witness was then handed a blueprint, which

had been marked for identification, and he described the upstairs room in which this light had appeared. After a few minutes the light was extinguished and witness saw no more of them for about half an hour, when they came out of the house. Witness saw no one else in the room while they were there. On this occasion witness, from his position across the street, could see them kiss and embrace.

On February 22nd, 1929, witness observed Porter leave the house at 101 U St., N. W. and drive in the direction of 14th and R Sts., N. W. He did not follow the defendant on this occasion, believing he would return. In a short time he did return, and with him was the same woman
30 whom he had previously met. They went in, he went in first and she followed him a few minutes later. Someone made a light downstairs on the U St. side of the house, and in a few minutes this light was extinguished and a light appeared on the second floor in the bedroom. This light was subsequently extinguished. After about twenty minutes, witness observed Porter and the same woman come out of the front of the house and walk slowly to the Chevrolet coach. It was about 9:15 o'clock at this time.

On March 6th, 1929 witness observed the defendant Porter leave 101 U St., N. W. and drive in a leisurely way to 14th and R Streets, N. W. This was early in the evening, the same girl meeting him who had previously met him. They went in a southerly direction and ultimately wound up near the Munitions Building, where the car was parked, both occupants of the car remaining on the front seat. They were there about an hour. Afterwards Mr. Porter drove back in the direction of 14th and R Sts., N. W., at which witness left his observation for the evening.

On March 9th, 1929, witness saw Porter meet the girl, after the same fashion as on previous occasions, and they drove to 101 U St., N. W., where they both entered. Within a few minutes after the parties entered the house, witness saw a light made downstairs. There was no light upstairs at this time. Witness hurried away to a telephone and called Mr. Richard Cox, a member of the police vice squad, and with whom he had previously spoken about this case, with reference to getting a warrant at Police Court for adultery. Mr. Cox advised he would come right down.

Witness then took up his position across the street from the house, and with the house in darkness continued his watch until Detective Cox arrived. Before Detective Cox arrived the light downstairs had been extinguished and the house was in darkness. Mr. Cox reached the place within a few minutes and they took up their positions together across the street, watching the house. About 9:15
31 o'clock, a light went on on the second floor and they saw the defendant, Porter, and the same woman in this room. Porter was walking about the room, apparently clad in undershirt. This was as much of his body as witness could see. The woman had some loose-fitting garment on. She was short, black-haired, and rather heavy-built. After the light had been made in the bay window of the room on the second floor for a few minutes, it was extinguished, and within a short time Porter and the woman came out of the house. Just as they were approaching the gate from the walk leading to the door of the house, witness and Detective Cox crossed the street hurriedly to where they were and got close to them. Porter and the woman got in Porter's machine and they drove away, witness following them in the general direction of 14th and R Sts., N. W., but Detective Cox did not accompany him. Porter drove the car back to the vicinity of 14th and R Sts., N. W., and then down R Street to an apartment house located at 1436 R Street, N. W. The girl here got out and went into the apartment building. She was walking rapidly. Porter drove the car away and as soon as witness could park, he hastily entered the apartment house behind the girl. He walked upstairs hurriedly and saw a light put on in an apartment. He believed it to be 32. He knocked on the door and a girl came to the door and he asked her if her name was Rose, or some such name, and she replied "No, my name is Helen". It was the same girl whom witness had seen Porter meet on many occasions. Witness then went downstairs and looked at the directory on the mail box in the hall and saw that the apartment was supposedly occupied by four girls, one of whom was named Helen F. Summers. He then returned to the apartment and told the girl, after knocking on the door, that he had found out her name, and that she would be named as the

co-respondent in a divorce suit. She slammed the door in his face. Witness returned to the apartment house next day and knocked on the door of apartment 32, but
32 got no response. He then went to see the colored janitor and found out that the girls had vacated the apartment. The janitor could give him no information as to where they had moved. Several months later, when witness was passing this apartment house, he dropped in and talked to a maid who was cleaning in the hall way. From her he learned that Helen F. Summers had moved to 1728 Connecticut Ave., N. W. He gave this information to the attorney for the plaintiff who, witness was told, issued a subpoena for the co-respondent, but the same was returned not found. Witness went to 1728 Connecticut Avenue N. W. on several occasions, and could never find anyone there who knew of Helen F. Summers until the month of April, 1930. Witness learned from a family on the third floor that she had left there about the 5th of October, 1929, and had not left any forwarding address, but had left Washington for New York, so he was told.

Whereupon **Richard J. Cox**, being first duly sworn, testified as follows: that he is a member of the Police Department Vice Squad and has been connected with the Police Department for fourteen years. On the day before an occasion in 1929 when he received a telephone call from Mr. Bonner, he had discussed with Mr. Bonner the question of a warrant for a party of U St. N. W. for adultery. On March 9th, 1929, about eight-thirty o'clock, he was telephoned by Mr. Bonner, and asked to come immediately to premises 101 U St., N. W. Witness got in his automobile and drove there, arriving there in a few minutes. When he got there the place was dark. Mr. Bonner, the detective who had previously testified, met him. There was a store on the south side of the street with a light in the vestibule. They stood in the darkness on the street and watched. About nine o'clock there was a light made in the bay window on the second floor of premises 101 U St., N. W. Asked if the witness knew the defendant, Jesse Ellis Porter, he answered
33 in the affirmative and pointed him out sitting at the trial table. He was then asked if he knew Mrs. Mary S. Porter, the plaintiff in this action, and he replied that he did not. On having her pointed out to him in the

courtroom, detective Cox said that he had never seen her before to his knowledge. From where the witness was standing on the sidewalk, he could see the defendant and a woman pass the window on the second floor of the house at 101 U St., N. W. Frequently the woman would put her hands up to her hair, apparently fixing it. Her arms were bare and it looked as if she were either in evening clothes or in a negligee of some kind. The man appeared to be in either shirtsleeves or undershirt. Witness judged the house was in darkness about fifteen or twenty minutes before they saw a light made on the second floor. He saw no one else in the house at all. The defendant and the woman whom witness described were in the room with the baywindow about fifteen minutes before the light was put out. In a short time thereafter they both came out of the house, and when they had nearly reached the front gate from the walk leading to the house, the witness and detective Bonner crossed the street and got close to them. Witness got a good look at defendant's face and at the woman's. She was about twenty-five years old, according to his best recollection, weighed about 140 pounds, and had dark hair. She was rather heavy-set. Defendant and this woman walked west on U Street. Witness said he did not follow them, but left Mr. Bonner there, who got in his car and drove away.

The defendant, on his behalf, offered the following testimony:

Jesse E. Porter, being sworn, testified that he is the defendant in this cause, 35 years old and has lived continuously in the District of Columbia since he was 14 years of age and has known the plaintiff from childhood who is now 33 years old. That immediately after their marriage they went away on an automobile trip and upon their return went to live with his (defendant's) mother at
34 101 U Street, N. W., Washington, D. C., where he and his mother had lived for about twenty years, as had been agreed upon prior to the marriage. They had not lived long with his mother when it was plain to be seen that the plaintiff was not satisfied. She took little or no interest in the home, although it had been understood that she was to take charge of the house. About the middle of

December, Mrs. Porter went to Garfield Hospital claiming to be anemic and she stayed at the hospital for about ten days and then went to her mother's home at 3118 18th Street, N. E. Witness stated he took his wife to the hospital because the doctor said she needed hypodermic injections and his mother was unable to give them. Asked if the girls from the hospital did not come over to the house to give the injections, he replied that they did. Witness insisted the doctor was recommending a complete rest and quiet. Witness testified the girls laughed and carried on in the room at his mother's home, so he took his wife to the hospital where she could have quiet. On January 3rd, 1928, defendant and plaintiff moved to an apartment at 2535 13th Street, N. W. and it was while there that defendant found that his wife was untruthful to him and was doing private nursing without his consent and against his will, as she was not strong. Defendant questioned her about it and she denied it and then he told her that he knew it was true because he had watched her go from the apartment to this home where she was doing nursing. Mrs. Porter was a trained nurse by profession before her marriage. About October 1st, 1928, plaintiff and defendant moved to 2316 F Street, N. W., where they remained until March 19th, 1928 when, without any notice whatsoever to defendant, plaintiff deserted him. Defendant returned to his home as usual after leaving his office, which is in the Munitions Building, where he is employed as a draftsman at a salary of \$2300 per annum and to his surprise found that his wife had deserted him and had taken all the furniture and every-

35 thing from the apartment except his personal clothing. He slept that night on the floor of the apartment. Defendant some time thereafter returned to the home of his mother where he has remained ever since.

Defendant does not know anyone by the name of Helen F. Summers, never saw such a person and never heard of such a person until this suit was filed. That he was never at 14th and R Streets, N. W. or in that vicinity for the purpose of meeting Helen F. Summers or anyone else in his life and that he never committed adultery with Helen Summers at 101 U Street, N. W., or any other place.

On January 12th, 1929, defendant drove in his mother's automobile with her to the Masonic Temple, leaving 101 U Street, N. W. about 7 o'clock P. M. Defendant and his

mother are members of the Order of the Eastern Star and January 12th was a meeting of the Grand Chapter in the auditorium of the Masonic Temple, 13th and New York Avenue, N. W. Defendant and his mother remained at the Grand Chapter meeting until about 11:30, when they returned together to 101 U Street, N. W., after which defendant went directly to his apartment.

That defendant kept a diary and had kept one for several years and he wrote in the diary usually the day following what had happened the day before and he kept the book in his desk at his office. Thereupon a Woodward & Lothrop diary for the years 1928-1929 was presented to defendant and he identified it as his diary all in his handwriting, except where printed, and the same was offered and admitted in evidence.

That on January 25th, 1929, defendant and his mother left 101 U Street, his mother's residence, about 7:30 P. M. and attended together a meeting of the Matrons and Patrons Association of 1927 at the residence of Mrs. Lina T. Stevenson, 208 Maryland Avenue, N. E., where they remained until about 11:30 and he took his mother back to her home
36 and then went directly to his apartment. At this meeting was Paul B. Elcan, Esquire, who remained there in the presence of defendant the entire evening, as also did defendant's mother.

On February 8th, 1929, defendant left 101 U Street about 7:30 P. M. with his mother and in his mother's automobile and drove to the Masonic Temple to attend a meeting of Eureka Chapter, Royal Arch Masons, of which he is a member. Eureka Chapter meets on the 2nd and 4th Fridays of every month, except in the summertime. Defendant remained at the Chapter until he took his mother home, she being in attendance at Good Will Chapter, Order of the Eastern Star, which met in the same building. Defendant and his mother drove from the Temple to 101 U Street, from whence defendant went directly to his apartment, 2316 F Street, N. W. Defendant recalls having sat with John R. East, whom he had not seen for several years, at the Chapter meeting that night and sat with him during the meeting and was continually in his presence until he took his mother home.

On February 22nd, which was a legal holiday, (George Washington's birthday) defendant spent the better part of

the day at his mother's home, 101 U Street, N. W., where he was doing some painting. Defendant remained at his mother's home until about 11 o'clock P. M. when he went back to his apartment.

On March 6th, 1929, which was a Wednesday, defendant, who was then a lieutenant in the Field Artillery, Officers' Reserve Corps, where he had been since his retirement from the Army after the War, attended a meeting of the officers at Oxford Hotel, 15th and Pennsylvania Avenue. He remembers this very distinctly because the fireworks, which had been intended for March 4th, were postponed on account of bad weather until the 6th and with other officers stood outside of the hotel and watched the fireworks before the meeting. Among the officers he remembers distinctly was Captain Hallock P. Long. Defendant remained at this meeting until about 10:30 when he returned directly to his apartment.

37 On March 9th, 1929, defendant left 101 U Street, N. W. with his mother about 7:30 P. M. and he and his mother attended together a moving picture at the Tivoli Theatre, 14th & Park Road, N. W. They saw Milton Sills in "The Crash" and he took his mother home immediately after the theatre, which was about 10:30 and went from there directly to his apartment.

Defendant denied that he committed adultery with the correspondent, Helen F. Summers, on January 12th, 1929, January 25th, 1929, February 8th, 1929, February 22nd, 1929, March 6th, 1929, March 9th, 1929 or any other time whatsoever. Witness testified he never showed Woodward & Lothrop diary to his wife. He did not take his wife home from any of the lodge meetings. Witness stated he did not have time to get another diary when asked why it was that the diary he used was for two years instead of the current year. Witness was then shown a diary which the plaintiff had kept, and from its pages had been torn certain written matter. Witness stated that he destroyed it because the matters he tore up were statements reflecting upon his mother. Witness also identified the blueprints of the house on U Street, having prepared the blueprints himself. These were the same prints, according to his testimony, that the other witnesses had identified. Witness stated he was not certain whether he was a resident of the District of Columbia, as he owned some property in Maryland. He admitted,

however, that he had lived in the District, and that all the married life of plaintiff and defendant was spent there. Upon being asked if it was not customary to sit in the balcony when members were planning to leave meetings of the Grand Chapter early, witness replied, "No, not exactly." Witness stated that the bed which his wife removed from the apartment they were occupying was her own property, and had been purchased and paid for by her.

Paul B. Elcan, being sworn, testified that he is a practicing lawyer and a member of the Bar of the Supreme Court of the District of Columbia and had
38 been for more than a dozen years, that he knew the defendant, Jesse E. Porter, intimately and he very well remembers that Mr. Porter was at the meeting of the Matrons and Patrons Association of 1927 at the home of Mrs. Lina T. Stevenson, 208 Maryland Avenue, N. E., on January 25th, 1929, that he verified the date and knew that to be the date and Mr. Porter was there the entire evening as was also his mother, Mrs. Bohrer.

Hallock P. Long, being sworn, testified that he is a practicing lawyer at this bar, and a captain in the Field Artillery, Officers' Reserve Corps and he knows intimately the defendant, Jesse E. Porter, who is a lieutenant in the same regiment. That he distinctly remember the meeting of the regiment in the Oxford Hotel, corner of Pennsylvania Avenue and 15th Street, N. W. on Wednesday, March 6th, 1929. He remembers it because the fireworks display which was to have been on March 4th had been postponed until this evening because of bad weather. He distinctly remembers that Lieutenant Porter attended this meeting and spent the entire evening and he remembers that Lieutenant Porter took some pictures of the fireworks display. That he was with Lieutenant Porter on this evening and they sat together in the meeting, not leaving until about 10:30.

The meeting was a regular military formation or conference. The officers signed in when the meeting was called to order and did not leave until the meeting was ended and they were dismissed by the Commanding Officer, which was about 10:30 P. M.

John R. East, being sworn, testified that he is a member of Eureka Chapter, Royal Arch Masons of the District of

Columbia and that the defendant, Jesse E. Porter, is also a member. That the Chapter meets on the 2nd and 4th Fridays of each month but that he was not a regular attendant. That on February 8th, 1929, he attended a meeting of Eureka Chapter at the Masonic Temple and Mr. Porter was there. He remembers it distinctly because it was election night and he had not been there for some time and
39 he had known Mr. Porter for many years and they talked together during the meeting, which did not close until after eleven o'clock.

Mrs. Eunice B. Mars, being sworn, testified that she is secretary of Good Will Chapter, Order of the Eastern Star, and is personally acquainted with Jesse E. Porter and his mother, Mrs. Bohrer. That on January 12th, 1929, witness attended the meeting of the Grand Chapter, Order of the Eastern Star at the Masonic Temple. That she knows that both Mr. Porter and Mrs. Bohrer were there because she saw them and talked with them. It was customary for persons who attended the Grand Chapter session to sit in the balcony when they planned to leave early. Witness left this meeting early herself and did not remain for the entire session.

Mrs. Annie N. Bohrer, being sworn, testified that she is the mother of the defendant, Jesse E. Porter, and that she had lived at 101 U Street, N. W. for more than twenty years. That she and her son were living at her home at the time of his marriage in September, 1927 and that her son and his wife lived there until about December, 1927. That before the marriage, she and the prospective bride had talked matters over and it had been agreed that after the weddings Mrs. Porter would — charge of the house and run it as her own. That about the middle of December, Mrs. Porter, who had been sick for some time and had been nursed by witness, went to Garfield Hospital where she had been a nurse before her marriage. That some time in January, Mr. and Mrs. Porter went to live in an apartment at 2535-13th Street, N. W. and from there they went to live at 2316 F Street, N. W. That her son spent considerable time at her home because he had his workshop there and worked on many evenings and whenever he had an opportunity.

That he is a draftsman by profession but did radio work outside of office. That prior to March 19, 1929, her son was eating his dinners at her home and that they frequently went out together in her car as he had no automobile himself.

40 She never heard of Helen F. Summers, and she was never in her house to her knowledge, and there was no one living in her home during January, February and March, 1929 except herself.

That she kept hanging in the kitchen a large calendar in the squares of which she kept her appointments and other data. This she had been doing for a number of years. Thereupon she was presented with a calendar of formerly the "German-American Fire Ins. Co. of the D. C." which witness said was the calendar on which she kept her appointments and other data for 1929 and she identified the months of January, February, and March, 1929 and stated that the writing in the squares with the lead-pencil was all her handwriting and was put there at or about the time of the occurrence. The calendar months of January, February and March of 1929 were offered and admitted in evidence. That on January 12th, 1929, she went with her son, Ellis, to the Masonic Temple, left 101 U Street about 7 P. M. and that she and her son attended at that place the meeting of the Grand Chapter, Order of the Eastern Star, and were together the entire evening and that he drove her back to her home about 11:30 P. M. Upon referring to the calendar for January 12th, 1929, witness testified that the words "Grand Chapter" were written there by her as was also "E. sat with me in balcony. Home 12 P. M." By "E" she meant her son whom she always calls "Ellis" rather than Jesse. That this was written probably the next day when it was fresh in her memory. Asked why, on cross-examination, she did not keep entries in the diary for the month of October, of the year prior to the dates on which it was charged her son had committed adultery, she replied that she — those entries in her book, but did not put them on the calendar. She was not sure that she kept any record of the events that happened in months prior to the alleged acts of adultery.

On January 25th, 1929, she and her son, Jesse E. Porter, attended a meeting of the Past Matrons and Patrons of

1927 at the residence of Mrs. Lina T. Stevenson. They were there all evening and when they went home, they took with them Mrs. Hines. That on their way over to Mrs. Stevenson's they stopped by Mrs. Arnold's, but she was not at home. Her attention was called to the writing in the square of the calendar of January 26th, 1929 and she said that was all her handwriting and written there either that day or the next.

On February 8th, 1929, witness and her son left her house in her automobile about 7:30 P. M. and went to the Masonic Temple. She attended a meeting of Good Will Chapter, Order of the Eastern Star, and her son a meeting of Eureka Chapter, Royal Arch Masons. That she and her son returned to her home about 11 o'clock P. M. and that the writing in the calendar of February 8th, 1929 is her writing and the first part of it means that she attended a cooking class at the Ambassador Theatre in the forenoon of the day, and the last "Grand Officers Good Will Chapter."

On February 22nd, 1929, she was at home all day and that her son came in about 10 in the morning and remained until about 11 P. M. and worked in the workshop and did some painting. That they did not go out either during the day or in the evening. That the word "home" in the square on the calendar of February 22nd, 1929, means that she was at home all day and the other writing in the square is "Chapter meeting called off," as they did not meet on holidays.

On March 6th, 1929, as is indicated by the writing in the square of the calendar on that date, her son took her out to Mrs. Mettler's before going to the Reserve Officers' meeting. She was only a few minutes at Mrs. Mettler's paying a call of condolence, Mrs. Mettler having lost her son. Her son left her at her home, 101 U Street, N. W. about 7:30 and she saw him no more that evening.

On March 9th, 1929, she and her son left 101 U Street about 7:30 and went to the Tivoli Theatre and saw Milton Sills in "The Crash," as is indicated in the square of that date on the calendar. The other writing in the square is "met Mrs. May Gibbon."

That she never interfered in any way with the business of her son and his wife and that after December, 1927, Mrs. Porter never came into her house, although they had never had any disagreement.

That her present name is Bohrer, she having married the second time.

Rollie M. Mosley, being sworn, testified that he is the janitor at the Ashton Apartments, 1436 R Street, N. W. That he has been janitor at that apartment house continuously from Thanksgiving day 1927 until the present time. That in March, 1929, apartment 32 of this apartment house was occupied by Joseph M. Stanley and wife. That Mr. Stanley and wife were in this apartment when he (the witness) first went to work in the apartment house in November, 1927 and remained as occupants of that apartment until about six months ago, when they removed to 5513 Broad Branch Road, N. W., out in Chevy Chase. That he has no recollection of receiving a call from a private detective or other person about March 9, 1929 with reference to a girl named Helen F. Summers, supposed to live in apartment 32. That he is positive he did not state to any person that four young ladies had occupied this apartment and vacated suddenly about that time. That this could not be the case as apartment 32 was continuously occupied by said Joseph M. Stanley during the entire period from November 1927 until about July, 1930. That no girl named Helen F. Summers had an apartment at this address during 1929 to his knowledge. That he is unable to tell who actually occupied the various apartments. His main knowledge being obtained from the directory on the mail boxes in the hall of the apartment house.

That he could not be positive of the names of occupants of the various apartments whose names were not listed in the directory on the mail boxes in the hall. That the name of Helen F. Summers was not listed in the hall. That there are twenty-eight (28) separate apartments in the apartment house. That he is positive that apartment 32 was not vacated in March 1929. That he is unable to
43 state whether or not some other apartment may have been occupied by four young ladies and vacated about this date. That he did not know who actually lived in any one apartment, but only knew the names of the persons occupying the apartment from the names posted over their mail boxes in the hall. That there may have been a lady with the name Helen F. Summers living in one of the apartments and not known to him. That there

were many who moved in and out of the building, and he did not necessarily keep accurate check on them unless they actually had an apartment in their own name.

The foregoing statement of evidence is the substance of all the evidence upon the trial and the copies of exhibits and documents introduced in evidence and I hereby certify same as such for the purpose of the statement of evidence herein as part of the record.

Signed in duplicate this 3rd day of December, 1931.

JENNINGS BAILEY,
Justice.

We agree.

S. McCOMAS HAWKEN &
RAYMOND NEUDECKER,
By RAYMOND NEUDECKER,
Attorneys for Plaintiff.
EDWIN C. DUTTON &
H. P. LONG,
By H. P. LONG,
Attorneys for Defendant.

Endorsed on cover: District of Columbia Supreme Court. No. 5573. Jesse Ellis Porter, Appellant, vs. Mary S. Porter. Court of Appeals, District of Columbia. Filed Dec. 10, 1931. Henry W. Hodges, Clerk.

WOODWARD & LOTHROP DIARY

JANUARY

1928 Wednesday 11

1929 Fri¹¹ - Went to meeting at Eureka Chapter.
While mother went to Grand Chapter meeting.
Meeting out early so went into G. C. meeting
until it was over.

1928 Thursday 12 Went to drill at Central High
School. Last one under Fries adminis-
tration.

1929 Sat¹² - Mother and I went to Grand Chapter
meeting. Got there about seven and left just
before it was over which was not until after
12 o'clock.

CONSUMPTION OF CRUDE RUBBER: The crude rubber now consumed throughout the world is well in excess of 500,000 long tons a year. This is almost eight times the quantity consumed twenty years ago and shows the tremendous growth of the industry since the development of the automobile.

WOODWARD & LOTHROP DIARY

JANUARY

1928 Wednesday 25

Stayed in

1929

Jan. 25 went to meeting of Eureka Chapter. All over about 8:45 as they were going to visit another Chapter. Went up to Good Will Chapter each of evening.

1928

Thursday 26 *Went home and had supper with mother.*

1929

Jan. 26 Took mother with me to meeting of *Nations and Patrons Association of 1927 at Mrs. Stephenson.*

MILES, NAUTICAL MILES AND KNOTS—The Statute Mile, British and American, is 5,280 feet long. The Nautical Mile is equal to one minute of latitude at the particular place in which the ship is—it varies since the earth is not a perfect sphere. The Knot is a measure of speed—one nautical mile an hour is a knot.

WOODWARD & LOTHROP DIARY

FEBRUARY

1928 Wednesday 8

Went home to supper and took mother
to see Emil Jannings in "The Last
Command" at Columbia.

1929

Fri. I went to election of officers at Eureka
and then to good will. Put Jack East at
Eureka.

1928

Thursday 9 Went to drill at Central High
School.

1929

Sat. ⁹ Went to Alex. with mother and
~~then~~ worked on radio for Shirley.

PREVENTION OF COLDS—IV: Becoming thoroughly chilled will often cause a cold. Since exposure cannot as a rule be entirely avoided during the cold seasons, the body must be trained to resist sudden changes of heat. Cool bathing—cold bathing for those who can stand it—are desirable.

WOODWARD & LOTHROP DIARY

FEBRUARY

1928 Wednesday 22 ~~went home to supper and~~
~~at Washington's Birthday.~~ Went down
 to West River. Bunt out leaving on way
 home. Towed to Marble \$3 and from
 Marble home \$12.

1929 Fri. ²² Bad day. Slept most of day all
 day.

1928 Thursday 23 Went to meeting of units at
 Headquarters.
 Car taken to Hawkins.

1929 Sat. ²³ Stopped by store on 17th St. to see
 about job for Elmer. Took old battery by
 Western Auto Supply and turned in on new
 one for \$6.30. Then went to Alexandria to
 call on Sherwood with mother.

COLOR IN WOMEN'S CLOTHES—A woman's eyes and hair usually determine the ideal colors for her clothes. Most desirable for the blonde woman with warm coloring is pink; for the blonde woman with a fair skin, black is ideal. Brunettes should choose good shades of red, pink, tan and lavender.

WOODWARD & LOTHROP DIARY

MARCH

1928 Monday 5 *Went down to Church's with Harry
To try out speakers.*

1929 Tue 5 - *Same as page before.*

1928 Tuesday 6 *Stayed in and painted book case
Bought cabinet base and cupboard.*

1929 Wed. 6 *Went to meeting of 3.13th F.G.
Saw part of fireworks.*

WHEN MAKING DOUGHNUTS—To prevent doughnuts, crullers and similar cakes from absorbing the grease in which they are fried, add one teaspoonful of vinegar to the grease in which you fry them.

WOODWARD & LOTHROP DIARY

MARCH

1928 Friday 9 Stayed in after Mary went to
Chapiter.

1929 Sat.⁹ Went to Lively to see Rutter's folks
in "The Creek".

1928 Saturday 10 Went home in evening.
Went to American.

1929 Sun.¹⁰ Went to S. R. in Chevrolet.
Pumped boat out.

CASUALTIES OF THE WORLD WAR—The total number of casualties of the World War, including soldiers killed, wounded, prisoners and missing was 37,399,386. Of these, 22,094,900 were Allies. The total number, killed and died, was 8,543,515. Of these, 5,157,315 were Allies.

FORMERLY THE GERMAN-AMERICAN FIRE INSURANCE CO. OF D. C.

1928 DECEMBER 1928						
SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

1st MONTH **JANUARY-1929** 31 DAYS

1929 FEBRUARY 1929						
SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
 2	<i>Home</i>  10	<i>Home</i> NEW YEAR'S 1	<i>Company - double Miss Read - Doyle one - one - one - one -</i> 2	<i>Company - Miss Read - one - one - one - one -</i> 3	<i>Company - Miss Read - one - one - one - one -</i> 4	<i>Home</i> 5
<i>Home</i> 6	<i>Home</i> 7	<i>Home</i> 8	<i>Home</i> 9	<i>Home</i> 10	<i>Home</i> 11	<i>Home</i> 12
<i>Ride in new car</i> 13	<i>down town</i> 14	15	16	17	18	19
<i>Ride in new car</i> 20	21	22	23	24	25	26
<i>Ride in new car</i> 27	<i>Home Board</i> 28	29	30	31	 18	 MOON

THE CHURCHES, BUILDINGS, & PARISHES OF, DUBLIN, IRE

THE CHURCHES, BUILDINGS, & PARISHES OF, DUBLIN, IRE

FORMERLY THE GERMAN-AMERICAN FIRE INSURANCE CO. OF D. C.

THE BOSTON ALMANAC & PUBLISHERS CO., BOSTON, MASS.

FEBRUARY 1929						
SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2		
4	5	6	7	8	9	
11	12	13	14	15	16	
18	19	20	21	22	23	
25	26	27	28			

3rd
MONTH

MARCH-1929

31
DAYS

1929 APRIL 1929						
SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
 LAST QUARTER 3	 NEW MOON 11	 FIRST QUARTER 18	 FULL MOON 25		1	Rode around to see E. Worked on Radio
3 <i>at home</i> <i>Ride to</i>	4 <i>Parade</i> <i>mostly day</i> <i>Home</i>	5	6 <i>Out to mother's</i> <i>evening</i> <i>E. to meeting</i> <i>Home</i>	7 <i>Funeral</i> <i>mother's</i> <i>at home</i> <i>terrible</i>	8 <i>Labaple</i> <i>Bull</i> <i>at home</i> <i>Jones</i>	9 <i>met Mrs. Hall</i> <i>in the</i>
10 <i>at home</i> <i>Shepard Park</i>	11 <i>Papering Kitchen</i> <i>E. to</i> <i>at home</i> <i>E. working</i>	12	13 <i>down town</i> <i>at home</i>	14	15 <i>Baltimore</i> <i>E. to</i> <i>at home</i> <i>at home</i>	16 <i>at home</i> <i>"Long"</i>
17 <i>at home</i>	18	19 <i>at home</i> <i>at home</i>	20 <i>at home</i> <i>at home</i>	21 <i>Painting lesson</i> <i>at home</i> <i>E. to</i>	22 <i>Annapolis</i> <i>at home</i> <i>at home</i>	23 <i>Rain</i> <i>at home</i> <i>at home</i> <i>at home</i>
24 <i>at home</i> EASTER	25 <i>at home</i> <i>at home</i>	26	27	28	29	30

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

FEB 16 1932

IN THE

Henry M. Hodges

CLERK

**Court of Appeals of the
District of Columbia**

—
No. 5573
—

JESSE ELLIS PORTER, *Appellant*,

VS.

MARY S. PORTER

—
PRIEF FOR APPELLANT
—

EDWIN C. DUTTON,

HALLOCK P. LONG,

Attorneys for Appellant.

INDEX

	Page
Statement of Facts	1-5
Assignments of Error	5-6
Argument	6-24

STATUTES AND CASES CITED

Title 6, Sec. 175, D. C. Code	8
3 App. D. C., 333, Glennan vs. Glennan	10
41 App. D. C., 109, Krous vs. Krous	10
41 App. D. C., 480, Emerson vs. Riley	24
49 App. D. C., 200, McKitrick vs. McKitrick	10
50 App. D. C., 229 Topham vs. Topham	10
52 App. D. C., 228, Allen vs. Allen	8
52 App. D. C., 323, Stewart vs. Stewart	9
56 App. D. C., 48, Dickenson vs. Dickenson	10

IN THE
**Court of Appeals of the
District of Columbia**

No. 5573

JESSE ELLIS PORTER, *Appellant*,

VS.

MARY S. PORTER

PRIEF FOR APPELLANT

STATEMENT OF FACTS

This is a suit for absolute divorce filed May 28, 1929 (R. 1) by Mary S. Porter against Jesse Ellis Porter naming one Helen F. Summers co-respondent. The

co-respondent was never served personally, but was brought in by publication by order dated April 9, 1930, more than a year after filing of bill (R. 12). The defendant denied the adultery or that any such person as Helen F. Summers existed, (R. 9) and on April 3, 1929, filed a motion (R. 5) to require the plaintiff to make her bill "more specific, so that the person described as 'Helen F. Summers, co-respondent' may be identified, or that the bill shall disclose if she is a person unknown or the name fictitious", which motion after argument was overruled (R. 6). The defendant was unable to obtain further light on the identity of "Helen F. Summers" until the affidavit filed April 9, 1930, in support of the order of publication, over a year later (R. 11). This affidavit was very vague, stating that during the period of alleged adultery, she had lived "in an apartment house on R Street at 15th Street, Northwest" (R. 12) and the defendant was unable to ascertain the name of the apartment house or the number of the apartment until the cross-examination of the detective at the trial, when it was identified as Apartment No. 32, The Ashton, 1436 R Street N. W., (R. 25) which is one of several apartments on R Street, and is not on the corner of Fifteenth Street.

At the trial, the plaintiff produced no direct evidence of adultery on the part of the defendant, and the only evidence as to the existence of "Helen F. Summers," the alleged co-respondent, was that of a private detective (R. 22 et seq.) with a partial corroboration in one instance, by a city detective (R. 26). Private Detective Bonner testified that he had on several different occasions seen the defendant Porter leave his mother's

residence at 101 U Street, his mother frequently accompanying him. That he would later leave his mother, usually at some Masonic function, and go to the vicinity of 14th and R Streets, where he would meet a young woman, whom witness later identified as "Helen F. Summers," and return with her to his mother's home at 101 U Street, and that later he would see a light go on in a bed-room upstairs for a few minutes, and then go out, and that in a short while the couple would come out, and return to the vicinity of 14th and R Streets, where he would leave the girl, and then return to the Masonic Temple.

On none of these occasions was there produced any corroborative testimony, except on March 9, 1929, (R. 24) when City Detective Cox was called to the scene by Detective Bonner. Private Detective Bonner testified that on that date he followed the defendant to 14th and R Streets, where he met the co-respondent and drove with her to 101 U Street, where they both entered, and made a light downstairs, there being no lights upstairs. That he thereupon phoned Detective Cox, in conformance with an arrangement he had made for getting a warrant. The light downstairs had in the meanwhile been extinguished, and after Mr. Cox arrived, they posted themselves across the street and about 9:15 saw a light go on in the second floor bedroom. That they could see the plaintiff and a woman walking around the room and that they seemed to be partially disrobed. In a few minutes the light was extinguished and the couple came out of the house. As they left the house, both detectives walked past them to get a good look at them, and that then Detective

Cox left him. Mr. Cox's testimony partially corroborates this part of Detective Bonner's testimony, (R. 26) but it is pertinent to note here that the couple were not accosted, and that no warrant was ever issued or arrest made. Detective Bonner's testimony continued uncorroborated to the effect that he followed the couple to 15th and R Streets, where the girl got out and Mr. Porter drove away (R. 25). He states he followed the girl into The Ashton, 1436 R Street, to Apartment 32, where he spoke to her and by looking at mailbox directory obtained her name, and returned to Apartment 32 and told her she would be named as co-respondent in a divorce suit. That he returned to the apartment the next day, knocked on door of Apartment 32 and got no response. He then saw the colored janitor and learned that the girls who occupied this apartment had removed, but could not learn where the co-respondent had gone, until several months later when a maid told him she had gone to 1728 Connecticut Avenue, but that no-one at that address knew of "Helen F. Summers." That in April, 1930, (over a year after suit was filed) "a family on the third floor" told him that she had gone to New York in October, 1929 (R. 26).

The defendant denied knowing "Helen F. Summers" or ever meeting any girl as testified to by Mr. Bonner (R. 28). He produced a diary (R. 37) he had kept for two years showing where he had been on the several occasions when he was supposed to have been with the co-respondent. This dairy was corroborated by a calendar kept by his mother (R. 43) and by her testimony (R. 32). Wherever possible he called disinterested witnesses to further verify the notes in his diary (R. 31 et

seq.). Upon Detective Bonner finally identifying the apartment on cross-examination (R. 25), he had issued a forthwith subpoena for Rollie M. Mosley, janitor at the Ashton, 1436 R Street, who was brought to court and testified (R. 35) that he had been janitor at this apartment house since Thanksgiving, 1927, and that to his knowledge a "Helen F. Summers" had never lived there. That Apartment 32 was occupied by Joseph M. Stanley and wife in 1927 when he first went to work there, and that they had continued to live in Apt. 32 until July, 1930. (The incidents alleged occurred in March, 1929). He denied that he had ever had a conversation in March, 1929, about a girl named "Helen F. Summers" who, with four room-mates, had vacated about that time (R. 36).

ASSIGNMENTS OF ERROR (R. 15)

1. The court erred in not dismissing plaintiff's bill for want of evidence to support it.
2. The court erred in denying motion of April 3rd, 1929 to make bill more specific.
3. The court erred in finding that the evidence in this cause was sufficient upon which to predicate a decree for absolute divorce.

4. The court erred in making the interlocutory decree of February 16th, 1931.

5. The court erred in making a final decree for absolute divorce of June 3rd, 1931.

ARGUMENT

These assignments of error, except the second, may be grouped and argued as one, and that is, that the trial court should have dismissed plaintiff's bill for absolute divorce for the reason that the plaintiff did not sustain the burden of proof and that the evidence of the defendant tremendously preponderates.

Referring to assignment of error numbered 2, the court will notice that there was no personal service on Helen F. Summers, the co-respondent named in the bill, and more than a year after filing the bill, there was service by publication. On the question as to whether or not there ever was any Helen F. Summers, and that she lived in an apartment-house at 1436 R Street, N. W., we have only the testimony of Perry Bonner, a private detective (R. 23). He says that she lived in Apartment 32, and tells us how he traced her there (R. 25).

The defendant testified that he never heard of any such person and that he was never at any such address or in that vicinity (R. 28).

Rollie M. Mosley, the janitor of this apartment at the time when the co-respondent is said by the detective to have lived there, February and March, 1929, testified that he had been the janitor of this apartment since Thanksgiving Day, 1927, until the time at which he was testifying, February 3, 1931. That in March, 1929, apartment 32 was occupied by Joseph M. Stanley and wife, and that they were there when he went there to work and remained there until about October, 1930. That he had no recollection of Bonner calling upon him in reference to Helen F. Summers, and he is positive that he did not say that four young ladies occupied this apartment and vacated it suddenly. That this could not be the case as Apartment 32 was continuously occupied by Mr. Stanley until about July, 1930. That no girl named Helen F. Summers had an apartment there in 1929. That the name of Helen F. Summers was not listed in the hall and he is positive that Apartment 32 was not vacated in March, 1929 (R. 35). We respectfully submit that the great preponderance of testimony is to the effect that there never was any Helen F. Summers and that it is a pure fabrication on the part of Bonner.

Mrs. Porter was a trained nurse before marrying Mr. Porter, September 21, 1927, and Mr. Porter a draftsman employed by the United States Government. When they were first married, as had been agreed upon before the marriage, they went to live with Mr. Porter's mother at 101 U Street, N. W., where Mr. Porter and his mother had lived about twenty years. It was plain to be seen that Mrs. Porter was not happy there and so Mr. Porter took her to an apartment, at her re-

quest, at 2535 13th Street, and from there in October, 1928, they moved to 2316 F Street, N. W., where they were living on March 19, 1929, at which time Mr. Porter returned to his apartment and found that his wife had deserted him, taking everything out of the apartment except his personal clothing, about a year and a half after the marriage. (The record shows 1928, which is a mistake.) (R. 27-28). Mr. Porter was a lieutenant in the Field Artillery, Officers' Reserve Corps, and had been such since his retirement from the Army after the war. (R. 30).

We come now to the important question involved in this case, which is, that the testimony offered on behalf of Mr. Porter at the trial of this cause so outweighs the testimony offered on behalf of Mrs. Porter that the court erred in not dismissing the bill and giving Mrs. Porter an absolute divorce.

In the District of Columbia, adultery is a crime punishable by fine not exceeding \$500, or imprisonment not exceeding one year, or both, (D. C. Code, p. 50, par. 175.)

In the case of Allen vs. Allen, 52 App. D. C. 228; 51 W. L. R. 51, this court said:

“Men who engage in the business of spying on women for hire in order to catch them in compromising situations are deservedly regarded with distrust, and their testimony like that of all questionable witnesses should not only be most care-

fully scrutinized, but received with great caution and reserve. Nevertheless, if such testimony be consistent with itself and the known facts and is corroborated or stands uncontradicted by other witnesses entitled to credit it should not be arbitrarily rejected." (Bonner was one of the detectives in this case.)

Again in the case of *Stewart v. Stewart*, 52 App. D. C. 323; 51 W. L. R. 162, this court said:

"Nor do we overlook the rule that the testimony of hired detectives in such cases should be scrutinized with great caution."

And again:

"It is true that a charge of adultery should not be sustained upon circumstances of mere suspicion, but only upon clear and satisfactory evidence of guilt."

In the case now before the court, a reading of the record will be convincing that Mr. and Mrs. Porter will never be reconciled and will never live together again as husband and wife, so that, from a standpoint of personal pleasure and comfort, Mr. Porter would prefer that the absolute divorce stand, but in the mind of this man who fought for his country, and who is still an officer in the Reserve Corps, the decision in this case means a great deal more than being divorced from a woman who was once his wife; it means that he stands convicted on the records of the court of a crime, and

this to a man of the mental calibre, honesty and integrity of Mr. Porter is far too serious to be permitted to stand when he knows that it is wrong, unjust and even cruel, and this appeal is prosecuted for the sole purpose of righting a wrong and erasing from the records a blot upon the name of a good citizen.

In the case of *Glennan v. Glennan*, 3 App. D. C., 333, a similar case to this, decided by this court thirty-eight years ago, the court said:

“There is no question of law in the record. The case turns wholly upon the sufficiency of the evidence to sustain the allegations of the bill.

In order to sustain a charge which not only brings lasting shame and disgrace to the wife, but also to her innocent children, the proof must be clear and satisfactory. Strong suspicion, or circumstances of suspicion, are not sufficient.”

This rule has been adhered to by this court, and the *Glennan* case cited in *McKitrick v. McKitrick*, 49 App. D. C., 109, 47 W. L. R., 758; *Krous v. Krous*, 41 App. D. C., 200, 41 W. L. R., 834; *Topham v. Topham*, 50 App. D. C., 229, 49 W. L. R., 115.

While in the *Glennan* case this court speaks of the lasting shame and disgrace to the wife and innocent children, we feel certain that the same rule would apply to a husband and his mother.

It is contended by Mr. Porter that the evidence produced on behalf of the defendant in this cause was insufficient to justify a finding of adultery. That there is no direct evidence of adultery and that the finding is based upon the uncorroborated testimony of detectives and was contradicted not only by the defendant, but by disinterested witnesses. It is further contended that by denying Mr. Porter's motion to make the bill more specific and identify the co-respondent, placed him at the trial at a great disadvantage. Had he been guilty and had he known the co-respondent, it would have been different, but being in fact innocent and having no knowledge whatsoever of any "Helen F. Summers," and not even being advised as to where she was supposed to have lived until at the trial, when by the testimony of Detective Bonner she was said to have lived at the Ashton, 1436 R Street in Apartment 32, he was unable to prepare his defense on this point, but was able by sending direct to the apartment building during the recess of the court on the day of the trial, to get the janitor, one Rollie M. Mosley, whose testimony is reported (R. 35).

The bill alleges (R. 3) that the defendant, Jesse Ellis Porter, committed adultery with Helen F. Summers, January 12 and 26, 1929; September 9, 16 and 23, 1929, and March 2 and 9, 1929, always at premises 101 U Street, N. W., which was the home of Mr. Porter's mother. In Detective Bonner's testimony, he adds the 25th of January, 1929, changes February 9th to February 8th, omits February 16th, changes February 23rd to 22nd and March 2nd to March 6th. These variances, about which defendant's counsel did not know until

during the trial, made it impossible for the defendant to produce other witnesses. For instance, changing the date of March 2nd to March 6th made it impossible to get other witnesses to court, but it just happened that Captain Hallock P. Long, who was with Mr. Porter on March 6th at the Officers' Reserve Corps meeting, was in court assisting in the trial.

We will take these six separate acts as testified to by Bonner and see what proof the defendant, Mr. Porter, offers.

As to January 12, 1929, Mr. Porter denies that he committed adultery with Helen F. Summers or anyone else at 101 U Street, N. W., or any other place (R. 28) and says that he went with his mother in her automobile to the Masonic Temple to a meeting of the Grand Chapter of the Order of the Eastern Star and remained there until 11:30, when he returned with his mother to her home at 101 U Street. We offered in evidence the diary of Mr. Porter in his own handwriting, and the entry was made at that time which states: "Mother and I went to Grand Chapter meeting. Got there about 7 and left just before it was over, which was not until after 12 o'clock." (R. 37). Furthermore, Mrs. Bohrer, mother of defendant, who owned 101 U Street, N. W., and had lived there for more than twenty years, testified (R. 33) that on January 12th, she and her son went to the Masonic Temple, left 101 U Street about seven P. M. attended the meeting of the Grand Chapter, Order of the Eastern Star and were together the entire evening, and that he drove her

back to her home about 11:30 P. M. To further substantiate this, there was admitted in evidence Mrs. Bohrer's diary, in her own handwriting, which was a large calendar, in the squares of which she noted in lead pencil her appointments which were written about the time of the occurrence, and on this date we find: "Grand Chapter. E. sat with me in balcony. Home 12 P. M." By "E.", she meant her son, whom she always called "Ellis." (R. 33). And further than this, we have the testimony of Mrs. Eunice B. Mars (R. 32), a disinterested witness, who says that she was the Secretary of Good Will Chapter, Order of the Eastern Star, and is personally acquainted with defendant, Jesse Ellis Porter, and his mother, Mrs. Bohrer. That on January 12th, 1929, witness attended the meeting of the Grand Chapter, Order of the Eastern Star, at Masonic Temple and that she knows both Mr. Porter and Mrs. Bohrer were there because she saw them and talked with them. So that, opposed to the testimony of Detective Bonner alone, we have the defendant, his diary, Mrs. Bohrer, her dairy and Mrs. Mars.

The next date, January 25, 1929, which was alleged in the bill of complaint as January 26, 1929, (R. 3), Detective Bonner testified that Mr. Porter left 101 U Street about 7 o'clock and had somebody with him and drove in the direction of Masonic Temple. After letting someone out at Masonic Temple, Porter drove up to 14th and R and picked up the same girl he had met on the previous Saturday night and then drove to 101 U Street, etc. (R. 23). This case was not reported and there would appear to be some mixing of the dates. However, Mr. Porter testified (R. 28) that he does not

know anyone by the name of Helen F. Summers, never saw such a person and never heard of such a person until this suit was filed. That he was never at 14th and R Streets, N. W., or in that vicinity for the purpose of meeting Helen F. Summers or anyone else in his life, and that he never committed adultery with Helen F. Summers at 101 U Street, N. W., or any other place. The entry in the diary of Mr. Porter for January 25th, 1929, is (R. 38): "Went to meeting of Eureka Chapter. All over about 8:45 as they were going to visit another chapter. Went up to Good Will Chapter rest of evening." The entry in the calendar-diary of Mrs. Bohrer for January 25, 1929 (R. 43) is: "Good Will Chapter. E. went to Eureka." So that, notwithstanding the change of the date as alleged in the bill from January 26 to January 25, we have opposed to Detective Bonner's testimony the testimony of Mr. Porter and the entry in the diary of Mr. Porter, and the entry in the diary of Mrs. Bohrer.

January 26th, 1929, Detective Bonner testified that Mr. Porter and his mother left 101 U Street and drove in direction of the new Masonic Temple, but did not stop there and instead went to Blue Triangle Hut, near Navy Department Building, reaching there about 7 o'clock in the evening (R. 23). Mr. Porter testified (R. 29) that he and his mother left her residence, 101 U Street, about 7:30 and attended a meeting of the Matrons' and Patrons' Association of 1927 at the residence of Mrs. Linda T. Stevenson, 208 Maryland Avenue, N. E., where they remained until 11:30, when he took his mother home and then went directly to his apartment. That at this meeting was Paul B. Elcan,

Esquire, and defendant's mother, Mrs. Bohrer. The entry in Mr. Porter's diary for January 26, 1929 (R. 38), is: "Took mother with me to meeting of Matrons' and Patrons' Association of 1927 at Mrs. Stevenson's." Mrs. Bohrer testified (R. 33) that on January 25, 1929, she and her son, Jesse Ellis Porter, attended a meeting of the Matrons' and Patrons' Association of 1927 at the residence of Mrs. Lina T. Stevenson, and that they were there all evening and the entry on her calendar for this date is (R. 43): "1927 business meeting Stevenson's." Mr. Paul B. Elcan testified (R. 31) that he is a practicing lawyer at this Bar and has been for more than a dozen years. That he knows Jesse E. Porter intimately and very well remembers that Mr. Porter was at the meeting of the Matrons' and Patrons' Association of 1927 at the home of Mrs. Lina T. Stevenson, 208 Maryland Avenue, N. E., on January 26th, 1929. That he had verified the date and knew that to be the date and Mr. Porter was there the entire evening, as was also his mother, Mrs. Bohrer. So that, opposed to Detective Bonner's testimony that on January 26, 1929, he saw Mr. Porter and his mother go to Blue Triangle Hut, near the Navy Department Building, and enter the Hut about 7 o'clock in the evening, we have the testimony of Mr. Porter and entry in his diary, the testimony of Mrs. Bohrer and the entry in her diary, and the testimony of Mr. Elcan that Mr. Porter was at the residence of Mrs. Stevenson in Northeast Washington.

February 8th, 1929, Mr. Bonner testified that Mr. Porter drove from 101 U Street to 1436 R Street, where the same woman whom he had previously met joined

him and they drove leisurely back to 101 U Street, etc. (R. 23). Mr. Porter testified (R. 29) that on February 8th, he and his mother drove to the Masonic Temple and that he attended a meeting of Eureka Chapter, Royal Arch Masons, of which he is a member. That this Chapter meets on the second and fourth Fridays of every month, except in summertime. That he remained there until he took his mother home, she attending Good Will Chapter, Order of the Eastern Star, in the same building. That he recalls having sat with John R. East at the meeting, and that he had not seen him for several years. Mr. Porter's diary (R. 39) records: "Went to election of officers at Eureka and then to Good Will. Met Jack East at Eureka." Mrs. Bohrer testified that on February 8, 1929 (R. 34), she and her son went to Masonic Temple and she attended Good Will Chapter, Order of the Eastern Star, and her son attended Eureka Chapter, Royal Arch Masons, and that she and her son returned to her home about 11 P. M., and her diary records: "Grand officers, Good Will Chapter." Then we have the testimony of John R. East (R. 31) that he is a member of Eureka Chapter, Royal Arch Masons, and that Jesse E. Porter is also a member. Chapter meets on second and fourth Fridays in each month, but that he is not a regular attendant. On February 8th, 1929, he attended a meeting of Eureka Chapter and Mr. Porter was there. He remembers it distinctly because it was election night and he had not been there for some time and that he and Mr. Porter talked together during the meeting, which did not close until after 11 o'clock. So that, as to February 8th, opposed to Detective Bonner alone, we have the testimony of Mr. Porter and the record of

his diary, the testimony of Mrs. Bohrer and the record of her diary, and the testimony of Mr. East.

Detective Bonner testified that on February 22nd, 1929, Porter left 101 U Street and drove in the direction of 14th and R Streets, but that he did not follow defendant, and in a short time he returned and with him the same woman he had previously met, etc. (R. 24). Mr. Porter testified (R. 29) that on February 22nd, which was a legal holiday (George Washington's Birthday) he spent the better part of the day at his mother's home, 101 U Street, N. W., where he was doing some painting, and he remained there until 11 P. M., when he went back to his apartment. The entry in his diary for this date is "Bad day. Worked around house all day" (R. 40). Mrs. Bohrer testified that she had never heard of Helen F. Summers and she was never in her house to her knowledge and that there was no one living in her home during January, February, March, 1929, except herself (R. 33). That on February 22nd, 1929 (R. 34), she was at her home all day and that her son came in about 10 in the morning and remained until about 11 P. M. and worked in the workshop and did some painting. That they did not go out either during the day or in the evening, and that the word "Home" in the square of the calendar for February 22nd, 1929, means that she was at home all day and the other writing in the square, "Chapter meeting called off," means that it did not meet on holidays. The entry on the calendar-diary for February 22nd is "Home" (R. 44). Opposed to the testimony of Detective Bonner, we have the testimony of Mr. Porter

and the entry in his diary, and the testimony of Mrs. Bohrer and the entry in her diary.

Mr. Bonner testified that on March 6th, 1929, Mr. Porter left 101 U Street, N. W., and drove leisurely to 14th and R Streets, early in the evening, met the same girl and went in a southerly direction and wound up near the Munitions Building, where the car was parked, both occupants remaining in the front seat. They were there about an hour, after which Mr. Porter drove back in the direction of 14th and R Streets (R. 24). Mr. Porter testified that on March 6th, which was Wednesday, he went to a meeting of the Officers Reserve Corps, he being a lieutenant in the Field Artillery, which he had been since his retirement from the Army after the War. This meeting was in the Oxford Hotel, 15th and Pennsylvania Avenue. He remembers this distinctly because the fireworks which had been intended for March 4th were postponed until the 6th because of bad weather and the officers stood outside the hotel and watched the fireworks before the meeting. That among the officers present was Captain Hallock P. Long. That he remained at the meeting until about 10:30, when he went directly to his apartment (R. 30). The entry in Mr. Porter's diary (R. 41) for Wednesday, March 6, 1929, is: "Went to meeting of 313th F. A. Saw part of fireworks." Mrs. Bohrer testified (R. 34) that on March 6, 1929, her son took her to Mrs. Mettler's before going to the Reserve Officers meeting. She was only a few minutes at Mrs. Mettler's, paying a call of condolence. Her son left her at her home, 101 U Street, N. W., about 7:30 and she saw him no more

that evening. The entry in Mrs. Bohrer's diary (R. 45) for March 6th, 1929, is: "Out to Mettler's in evening. E. to Reserve Officers Meeting. Home." The testimony of Mr. Hallock P. Long (R. 31) is that he is a practicing lawyer at this Bar, a captain in the Field Artillery Officers Reserve Corps and intimately knows Jesse E. Porter, defendant in this case, who is a lieutenant in the same regiment. He distinctly remembers the meeting of the regiment in the Oxford Hotel on Wednesday, March 6, 1929, because the fireworks display, which was to have been given March 4th, had been postponed because of bad weather. He distinctly remembers that Lieutenant Porter attended this meeting and spent the entire evening. That he was with Lieutenant Porter on this evening and they sat together in the meeting, not leaving until about 10:30. The officers signed in when the meeting was called to order and did not leave the meeting until the meeting was ended and they were dismissed by the commanding officer, which was about 10:30 P. M. Opposed to the lone testimony of Detective Bonner as to what happened on March 6th, we have the testimony of the defendant, Mr. Porter, and the entry in his diary, the testimony of Mrs. Bohrer and the entry in her diary, and the testimony of Captain Hallock P. Long.

Detective Bonner testified that on March 9th, 1929, Porter met the girl in the same fashion as on previous occasions and they drove to 101 U Street, N. W., where they both entered, etc. (R. 24). That he (Bonner) hurried to the telephone and called Mr. Richard Cox, a member of the Police Vice Squad, with whom he had

previously spoken about this case with reference to getting a warrant at police court for adultery. Mr. Cox reached the place within a few minutes and they stood together across the street watching the house. About 9:15, light went out on second floor and they saw Porter and the same woman in this room. She was short, had black hair and rather heavy built. When Porter and the woman came out, just as they were approaching the gate from the walk leading to the door of the house, witness and Detective Cox crossed the street hurriedly and got close to them. Porter and the woman got in Porter's machine and they drove in the general direction of 14th and R Streets. Cox did not accompany them. Porter drove to the vicinity of 14th and R Streets and then down R to an apartment at 1436 R Street. The girl got out and went in the apartment building, walking rapidly. Porter drove away, and as soon as witness got back, he hastily entered the apartment house, walked upstairs and saw a light on in an apartment which he believed to be 32. He knocked on the door and a girl came and he asked her if her name was "Rose," and she said, "No, my name is Helen." It was the same girl who was with Porter. Witness then went downstairs and looked at the directory in the mailbox in the hall and saw that the apartment was supposedly occupied by four girls, one of whom was named "Helen F. Summers." He returned to the apartment and told the girl, after knocking on the door, that he had found out her name and that she would be named as co-respondent in a divorce suit. She slammed the door in his face (R. 25-26). He returned to the apartment house next day, knocked on the door of Apartment 32 and got no response. He

then went to see the colored janitor and found out that the girls had vacated the apartment. Janitor could give him no information as to where they had moved. Several months later, witness dropped in this apartment house and talked to a maid who was cleaning in the hallway, and learned from her that Helen F. Summers had moved to 1728 Connecticut Avenue. Subpoena was issued for co-respondent, but returned "Not Found." Witness went to 1728 Connecticut Avenue several times and could never find anyone there who knew Helen F. Summers, until April, 1930, when he learned from a family on the third floor that she left there about 5th of October, 1929, and had gone to New York, leaving no forwarding address. Witness Richard J. Cox testified that he was a member of the Police Department Vice Squad and that on the day before the occasion in 1929 when he received a telephone call from Bonner, he had talked with Bonner on the question of a warrant for a party on U Street, N. W., for adultery. On March 9, 1929, about 8:30, he received a phone call from Bonner, who asked him to come immediately to 101 U Street, and witness arrived there in a few minutes. When he got there, the place was dark. Bonner met him. They stood in the darkness on the street and watched. About 9 o'clock, there was a light on second floor of 101 U Street. Asked if he knew defendant Jesse E. Porter, he answered in the affirmative, and pointed him out at the trial table. Said he did not know Mrs. Porter. On having her pointed out to him in the courtroom, said that he had never seen her before to his knowledge. He could see defendant and a woman pass a window on the second floor and frequently the woman would put her hands up to her

hair, apparently fixing it. Her arms were bare and it looked as if she were either in evening clothes or in a negligee of some kind, and the man appeared to be either in short sleeves or undershirt. House dark about 15 or 20 minutes before light on second floor. When they came out of house and had nearly reached the front gate, witness and Detective Bonner crossed the street and got close to them. He got a good look at defendant's face, and the woman's. She was about twenty-five years old, weighed about 140 pounds and had dark hair, rather heavy set. Defendant and this woman walked West on U Street. Witness did not follow them, but left Mr. Bonner there. Mr. Porter testified (R. 30) that on March 9th, 1929, he and his mother left 101 U Street about 7:30 and attended together a moving picture at the Tivoli Theatre, 14th and Park Road. That they saw Milton Sills in "The Crash." That he took his mother home immediately after the theatre, which was about 10:30, and then went directly to his apartment. The entry in Mr. Porter's diary for March 9th, 1929, is: "Went to Tivoli to see Milton Sills in 'The Crash' " (R. 42). Mrs. Bohrer testified (R. 34) that she and her son left 101 U Street about 7:30 on March 9, 1929, and went to the Tivoli and saw Milton Sills in "The Crash," and the entry in her diary for March 9, 1929, is: "Met Mrs. May Gibbon. Tivoli, Milton Sills in 'The Crash' " (R. 45). So that, opposed to the testimony of Detectives Bonner and Cox, we have the testimony of Mr. Porter and the entry in his diary, and the testimony of Mrs. Bohrer and the entry in her diary.

It will be noted that Detective Bonner says (R. 25)

that on March 9th when he and Detective Cox were together, that "Porter and the woman got in Porter's machine and they drove away," while Cox testified (R. 27) that "Defendant and this woman walked West on U Street." We admit that this is not a very material variance, yet there stood Cox and Bonner together, peering into the faces of Mr. Porter and "Helen F. Summers" and one of them testifies that they got in the car and went away and the other that they walked West on U Street. Then, too, here was Cox, a member of the Vice Squad of the Police Department of the District of Columbia, whose duty it was to make arrests when he saw a crime committed, and according to Bonner, he had been spoken to about this particular case with reference to getting a warrant at the Police Court; nevertheless, he actually saw the crime committed and was close enough to have laid his hands upon the criminals, yet he utterly failed in his duty and made no arrests. The truth is, he could not have made an arrest because neither Porter nor Helen F. Summers or any other woman with Porter, were there, and the whole story is a fabrication, pure and simple, and existed only in the depraved minds of these two spying men who were ready and willing to commit perjury for a piece of silver.

"Where it clearly appears that a witness has willfully testified falsely as to a given point, his entire testimony is entitled to little consideration."
Emerson v. Riley, 41 App. D. C., 480.

It is respectfully submitted that the testimony of Private Detective Perry Bonner and Public Detective

Richard J. Cox is entitled to little or no consideration and as theirs are the only testimony in this case tending to prove adultery against this appellant, with the volume of testimony tending to show the falsity of the statements of these detectives and the innocence of appellant, that this cause should be reversed.

EDWIN C. DUTTON,

HALLOCK P. LONG,

Attorneys for Appellant.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

FOR MR. CHIEF JUSTICE MARTIN

MAR 31 1932

IN THE

Court of Appeals, District of Columbia

No. 5573.

JESSE ELLIS PORTER, *Appellant*,

VS.

MARY S. PORTER, *Appellee*.

BRIEF ON BEHALF OF APPELLEE.

S. McCOMAS HAWKEN,
RAYMOND NEUDECKER,
WILLIAM C. ASHFORD,
Attorneys for Appellee.

IN THE
Court of Appeals, District of Columbia

No. 5573.

JESSE ELLIS PORTER, *Appellant*,

vs.

MARY S. PORTER, *Appellee*.

BRIEF ON BEHALF OF APPELLEE.

STATEMENT OF THE CASE.

On March 28th, 1929, Mary S. Porter filed suit for absolute divorce against Jesse Ellis Porter, as defendant, and Helen F. Summers, as corespondent, charging among other things, adultery committed by the defendant and corespondent at premises 101 U Street, Northwest, on, to-wit, January 12th and 26, February 9th, 16th, and 23rd, and March 2nd and 9th, 1929, and on divers other dates between January 1st, 1929, and March 9th, 1929, at the same place, and at other places then unknown to the plaintiff. After hearing the testimony adduced at the trial on behalf of the plaintiff

and defendant Porter, Mr. Justice Bailey filed a memorandum opinion (Rec. 13) upon which was entered a decree for absolute divorce, permanent alimony and counsel fees, and from which appellant appeals.

ASSIGNMENT OF ERRORS.

Error assigned by the appellant is discussed under two headings:

1. The Court erred in denying the motion to make the bill of complaint more specific.
2. The Court erred in entering a decree in favor of the plaintiff (appellee).

ARGUMENT.

1. Appellant's first contention is that error was committed by the trial court in the denial of his motion to make the bill of complaint more specific in order to identify the corespondent, Helen F. Summers, or disclose whether she is a person unknown or the name fictitious. Using the best information available to her, plaintiff complied with the provisions of Section 983 of the Code in naming Helen F. Summers as defendant and serving her by publication, after efforts at personal service proved ineffectual. The mere fact that the plaintiff was unable to secure personal services of process on this woman, who had been informed by a detective that she would be named as corespondent in this case (Rec. 25, 26), does not establish the fact that Helen F. Summers is non-existent or the name fictitious. Had plaintiff failed to make her a party to this suit, she would have violated Section 983 of the Code, as interpreted by this Court in the case of *McLarren vs. McLarren*, 45 App. D. C. 237.

It is not contended or shown by appellant that the denial of his motion resulted in any substantial injury to him.

A motion to make more specific is addressed to the discretion of the trial court and is properly denied where the facts are set forth in the bill with reasonable definiteness, and the rulings of the court on motions of this nature are not ordinarily disturbed on appeal.

21 R. C. L. 600, par. 146.

Also *Fitzhugh vs. Fitzhugh*, 15 App. D. C. 121.

Upon the overruling of this motion, appellant answered and the case proceeded to trial and the trial court found appellant guilty of adultery with Helen F. Summers. No exceptions were taken to any action of the court at any stage of the proceedings.

2. The 1st, 3rd, 4th, and 5th assignments of error, which are grouped in appellant's brief, and in this brief, necessarily involve a recital of some of the evidence adduced before the lower court.

Mrs. Porter testified among other things (Rec. 19, 20, 21) that she was neglected by her husband, that he left her at home and remained out until late hours at night, that he told her "You do not mean anything to me any more", and when she protested against his treatment of her he said he was going to continue to treat her that way so long as she continued to hang on to him; that although marital relations between them had ceased in December, 1927, in January or February, 1929, she found a tin box containing a rubber contraceptive in the pocket of his army coat, although previously he had kept them locked in a bu-

reau drawer; that the appellant asked her shortly before their separation if she had a detective following him; that she left her husband on March 19th, 1929, upon receiving the report of the detective employed by her.

Perry Bonner, private detective, testified (Rec. 21) that in October, 1928, he was employed by Mrs. Porter to observe the movements of her husband, and on about five or six occasions in November and December, 1928, he saw Porter drive to 14th and R Streets and meet a girl, waiting for him there, and after driving around a while would let her out at the same place.

Bearing in mind that the appellant's answer does not even suggest the nature of his defense, other than a general denial of adultery, and that both Bonner and Detective Cox of the ^{Police} ~~Public~~ Force, testified prior to the testimony of appellant and his mother, review of the testimony will show that the various alibis offered by appellant in many respects corroborate the testimony of the detective. Let us examine the specific dates.

January 12th, 1929, Bonner says (Rec. 22) that appellant drove with his mother to the Masonic Temple between seven and eight o'clock, both of them went inside, and about nine o'clock appellant came out alone and drove to 14th and R Streets and parked in an alley near the intersection, the same woman previously mentioned joined him, and they drove to 101 U Street, Northwest; appellant went in and in a few minutes was followed by the girl; they left a light burning in the hall and there was no other light in the house; they remained in the house for less than an

hour, came out together, drove to 14th and R Streets, the girl got out of the car, and appellant drove back to the Masonic Temple, and came out shortly thereafter with his mother. Appellant (Rec. 28) corroborates Bonner to the extent of testifying that he went with his mother to the Masonic Temple, leaving 101 U Street, his mother's home, about seven o'clock; appellant, however, says that he remained at the Masonic Temple until about 11:30, returning to 101 U Street with his mother, and his mother testified to the same effect.

Annie N. Bohrer, appellant's mother, lived alone at 101 U Street during January, February and March, 1929 (Rec. 33), and appellant and appellee lived at 2316 F St., N. W., during that period until March 19, 1929. (R. 28.)

January 25th, 1929, Bonner's testimony (Rec. 23) as to appellant's movements is substantially the same as on January 12th, going to the Masonic Temple with a lady, presumably his mother, leaving, meeting the girl, taking her to the U Street address, entering as before, and returning to the Masonic Temple after leaving the girl at 14th and R Street. Appellant and his mother, however, testified (Rec. 29, 33) that they went to a meeting at Mrs. Stevenson's at 208 Maryland Avenue, Northeast, on that evening, meeting Paul B. Elcan, and others, *but* both the diaries which they introduced in evidence record that they went to a Chapter meeting (held in the Masonic Temple) on the 25th and that they went to Mrs. Stevenson's on the 26th. (Rec. 38, 43.) It is significant that the bill of complaint specifically charges adultery on the 26th but does not specifically mention the 25th, about which

Bonner testified. It is also worthy of note that appellant and his mother coincide in their testimony and in the entries in their respective diaries, but the testimony and diaries are at a variance. Both diaries show that appellant went to Eureka Chapter on the 25th and the mother's diary shows that she went to Good Will Chapter on that evening, and both are held in the Masonic Temple. Furthermore, appellant testified that Eureka Chapter meets on the 2nd and 4th Fridays of every month, and the calendar (Rec. 43) shows the 25th to be the 4th Friday, so it appears that Bonner was correct in his testimony that appellant went to the Masonic Temple, and appellant, his mother and Paul B. Elcan were in error when they testified that Porter, his mother, and Elcan were at Mrs. Stevenson's on the 25th.

On January 26th, 1929, Bonner says (Rec. 23) that appellant and his mother drove to the Blue Triangle Hut, near the Navy Building, arriving there about seven o'clock in the evening, and that when they entered Bonner immediately discontinued his observations for the evening. The diaries of appellant and his mother show them to have been at Mrs. Stevenson's that evening, although their testimony, and that of Mr. Elcan, puts them at Mrs. Stevenson's the preceding evening.

February 8th, 1929, Bonner says (Rec. 23) that appellant drove from 101 U Street to 1436 R Street, met the same girl, returned to 101 U Street, where they entered; a short while later a light was made upstairs, was soon extinguished, and he saw no more of them for about half an hour when they came out of the house; he saw no one else in the room while

they were there and from his position on the street could see them kiss and embrace. Appellant and his mother (Rec. 29, 34) testified that appellant was at a Masonic meeting throughout that evening.

February 22nd, 1929, Bonner says (Rec. 24) that appellant left 101 U Street and went in the direction of 14th and R Streets, but Bonner did not follow him; appellant shortly returned with the same woman. Appellant went in the house first and she followed a few minutes later; a light was made downstairs and in a few minutes extinguished and a light appeared on the second floor in the bed room; the second light was subsequently extinguished; after about twenty minutes appellant and the woman came out of the house, it being then about 9:15 o'clock P. M. Appellant and his mother state that both stayed at home all that day and until late in the evening. (Rec. 29, 34)

March 6th, 1929, Bonner says (Rec. 24) that appellant left 101 U Street and drove to 14th and R Streets, meeting the same girl, this being early in the evening. They drove in a southerly direction and ultimately parked near the Munitions Building, both being on the front seat; they remained about an hour, when they left, driving in the direction of 14th and R Streets, and Bonner did not follow them. Appellant (Rec. 30) and the witness Long (Rec. 31) say that appellant attended a meeting that night at the Oxford Hotel, 15th and Pennsylvania Avenue, not far distant from the Munitions Building. As Bonner said he observed appellant and the woman early in the evening, it is entirely consistent that appellant left the woman somewhere and then attended the meeting. A fireworks display was

scheduled for that evening and appellant and Long state that they watched part of the display from outside the hotel prior to the meeting (Rec. 30), and it is not speculating rashly to assume that the woman was taken downtown by appellant for the same purpose.

March 9th, 1929, Bonner says (Rec. 24) appellant met the girl in the same manner as previously and drove to 101 U Street, where they both entered; a light was shortly made downstairs and there was no light upstairs; Bonner went to a telephone and called Richard Cox, a member of the Vice Squad of the Metropolitan Police; Bonner resumed his position and continued to watch the house until the arrival of Cox, the house remaining in darkness during that period; Cox, upon his arrival, watched the house with Bonner until about 9:15 when a light went on on the second floor and they saw appellant and the woman in the room on the second floor, appellant apparently clad in an undershirt, which was as much of his body as they could see; the woman, who was short, black haired, rather heavily built, had some loose-fitting garment on; the light was shortly thereafter extinguished and soon appellant and the woman came out of the house, and Bonner and Cox crossed the street and got close to them before they got into the machine and drove away. Cox did not follow them, and Bonner did. Bonner's subsequent efforts to identify the woman are set forth on page 26 of the Record and will not be repeated here.

Richard J. Cox, a member of the Vice Squad of the Metropolitan Police, testifying about the occasion of March 9th, says (Rec. 26) that on the preceding day Bonner discussed with him the question of se-

curing a warrant for adultery for a party on U Street; on March 9th, about 8:30 P. M., Bonner telephoned him asking him to come to 101 U Street, Northwest, and witness did so; upon his arrival the house was dark and he and Bonner stood in the darkness on the street and watched; about nine o'clock a light was made in the second floor bay window; Cox identified appellant at the trial and said he did not know appellee and to his knowledge had never seen her before; from the sidewalk Cox could see appellant and a woman pass the window on the second floor; frequently the woman would put her hands up to her hair, apparently fixing it; her arms were bare and it looked as if she were either in evening clothes or a negligee of some kind; the man appeared to be in his shirtsleeves or undershirt; witness judged the house was in darkness about fifteen or twenty minutes after his arrival before they saw a light on the second floor, and saw no one else in the house other than appellant and the woman; appellant and the woman were in the room described about fifteen minutes before the light was extinguished and shortly thereafter came out of the house; Cox and Bonner crossed the street and got close to them and witness had a good look at the faces of appellant and the woman; the woman was about twenty-five years old, according to his best recollection, weighed about 140 pounds and had dark hair and was rather heavy set; witness did not follow them and Bonner got into his own car and drove away.

As to this occasion, appellant and his mother testified that they attended a moving picture show between the hours of 7:30 and 10:30 o'clock P. M. (Rec. 30, 34).

It appears from the record that appellant told his wife that she did not mean anything to him and had treated her accordingly (Rec. 20), and had asked her if she had a detective following him (Rec. 21). Suspicious and conservative, appellant planned his movements in advance. He left his wife at home. His mother lived alone at 101 U Street, Northwest (Rec. 33), so appellant takes her to Masonic meetings, leaves her there, and shortly thereafter meets the correspondent and goes with her to the empty home of his mother, accomplishes his mission, and is back at the Masonic meeting in time to make his presence known and to take his mother home. Mrs. Bohrer, the mother, produced her diary for the three months embraced in the adultery charges, but "was not sure that she kept any record of the events that happened in months prior to the alleged acts of adultery" (Rec. 33). A significant weakness of the diary alibis developed when Bonner testified to an act of adultery on January 25th, instead of January 26th as specifically charged in the bill; appellant and his mother so testified as to contradict Bonner, but the die was cast insofar as the two diaries were concerned, for both the diaries corroborated Bonner and contradicted appellant and his mother.

The rule is well established in this jurisdiction that a trial judge, sitting without a jury, is the sole judge of the credibility of the witnesses and the weight to be given their testimony. Having done so, his findings will not be disturbed "unless they are manifestly wrong."

Boteler vs. Plugge, 57 App. D. C. 69, 70.

This court has also said, in *Brown vs. Railroad Company*, 11 App. D. C. 37, 43, that it has "nothing to do with the preponderance of evidence."

In *McLarren vs. McLarren*, 45 App. D. C. 237, 238, this Court referring to the trial below, said:

"It was tried in open court, with full opportunity in the trial justice to observe the demeanor of witnesses and to judge of their veracity. In such cases the finding of the trial justice on questions of fact has much the same sanctity as the verdict of a jury, and will not be disturbed on appeal unless a mistake of judgment is so apparent as to demand a reversal."

In *Blundon vs. Blundon*, 56 App. D. C. 313, this Court said:

"The weight to be given to the testimony of witnesses depends much upon their appearance on the stand, and for that reason the trial court is the best judge of its credibility. It is the settled rule in such cases that the finding of the lower court will not be disturbed, unless it clearly appears to be wrong."

In *Cole vs. Cole*, 52 App. D. C. 302, this Court said:

"* * * so far as it (the finding) depends upon conflicting testimony, or upon the credibility of witnesses, or so far as there is any testimony consistent with the finding, it must be treated as unassailable."

See also *Burroughs vs. Burroughs*, 55 App. D. C. 269, 270; *Snow vs. Snow*, 50 App. D. C. 242.

In *Stewart vs. Stewart*, 52 App. D. C. 323, 325, this Court said:

“* * * a charge of adultery should not be sustained upon circumstances of mere suspicion, but only upon clear and satisfactory evidence of guilty * * * but that rule does not require proof beyond the possibility of doubt, nor does it necessarily require proof by eye witnesses of the actual offense.”

Appellant argues in his brief that the testimony of Private Detective Bonner and Policeman Cox is entitled to little or no consideration and that their evidence is a fabrication existing “only in the depraved minds of these two spying men who were ready and willing to commit perjury for a piece of silver” (Appellant’s brief, page 23). Although not disclosed by the record, appellee is willing to admit that Bonner received pay for his investigation, but the suggestion that Cox received even “a piece of silver” emanates from the imagination of appellant’s counsel and is unsupported in fact. Cox is a member of the Vice Squad of the Police Force and has been a police officer for fourteen years. (Rec. 26). Any interest which it may be contended that either Bonner or Cox had in this case is inconsequential when contrasted with the financial burden and social stigma resulting to appellant, and incidentally his mother, from a decree finding him guilty of adultery and ordering him to pay permanent alimony to the appellee. The trial justice could, and doubtless did, weigh and consider the interest and bias of appellant and his mother in this case, scrutinizing their testimony as carefully as that of Bonner. Bonner’s interest in this case is transitory; their interest, unending.

“* * * the interest of the witness in the result of the trial and his consequent bias should be considered.”

10 R. C. L. 1004, par. 192.

It is true, as appellant contends, that this Court has heretofore expressed the view that the testimony of hired detectives should be scrutinized with great caution, but this Court has frequently upheld the findings of the lower court based upon such evidence.

In *Allen vs. Allen*, 52 App. D. C. 228, 231, this Court said:

“* * * the trial judge was able to note the appearance, demeanor, and manner of the detectives while they were testifying, and as he was in a better position than we are to determine their credibility, we cannot say that their testimony was without weight and entitled to no consideration.”

In *Bateman vs. Bateman*, 42 App. D. C. 230, this court held the testimony of detectives to be sufficient and instructed the lower court to grant the plaintiff a decree of divorce.

Appellant's brief quotes from the case of *Glennan vs. Glennan*, 3 App. D. C., 333, and cites the cases of *McKitrick vs. McKitrick*, 49 App. D. C., 109, *Krous vs. Krous*, 41 App. D. C. 200, and *Topham vs. Topham*, 50 App. D. C. 229. This Court, in the case of *Allen vs. Allen*, 52 App. D. C. 228, 232, distinguished these four cases, and reference is made to that decision for the Court's discussion of them.

It is submitted that the lower court in the present case had ample evidence, and abundant authority,

upon which to base its finding and decree, and the same should be affirmed.

Respectfully submitted,

S. McCOMAS HAWKEN,
RAYMOND NEUDECKER,
WILLIAM C. ASHFORD,
Attorneys for Appellee.

